LEGISLATION.

The Chitties Regulation Amendment Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Chitties Regulation Amendment Bill be taken up for final reading and passed.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

PRESIDENT: I take it that the House accepts the motion.

The motion was carried.

The Income Tax Regulation Amendment Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Income Tax Regulation Amendment Bill be read in the Council.

MR. K. GEORGE (*Financial Secretary to Government*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, there has been some representation after the new Income Tax Regulation was passed that it stands in need of amendment, and that some difficulties and inconveniences are experienced by the assessees. And also representations were made in this House that it should be on the lines of the late Act of British India, namely, the Act of 1922, which was passed subsequent to the Regulation. The amendment of the Regulation was therefore taken up for consideration and the present Bill now before the House is the result of that consideration.

The main and the most important of the amendments are explained in the Statement of Objects and Reasons and a note on the various clauses has also been appended. All the same, I think I may make a few remarks on some of the salient points of the Bill itself.

In the first place, as the House is aware, there was some doubt as to the definition of the word "agriculture." I believe it was Mr. P. K. Narayana Pillai who brought to the notice of the House that income by agriculture need not necessarily be from land paying revenue to Government but may be from all lands. I may say that it was intended to be restricted to income by agriculture from land paying revenue to Government. Although that was and could be the meaning, however, in view of the fact that a suggestion was made that it is likely to be otherwise interpreted, it is thought expedient to take advantage of the Amendment Bill to make the point clear and declare that only lands that pay revenue to Government will be exempted.

Then with reference to the definition of the word "income," I daresay the House knows that it is generally supposed to be income which has been actually received by any particular assessee. In many instances it may not be actually received, because, in the case of some firms or in the case of some businesses, the practice seems to be to take

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stock at a particular time and see what are the assets and liabilities and what are the profits and gains. Therefore, it may not be strictly income. Therefore, the words "profits and gains" have also been added.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): May I know whether Mr. Subba Aiyar differentiates between profits and gains and, if so, how?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any difference.

Then, under the Regulation as it stands, it is only a private employer who has entered into an agreement with Government that is bound to realise or at any rate deduct income tax out of the salary paid to his employees. The amendment makes it clear that, whether he has entered into an agreement with Government or not, all private employers are bound to do so.

The Regulation makes mention of house property and the income from house property being taxed. The term used is "residential house." That has been found difficult to interpret in many cases because a person may not actually reside there or he may be doing some business there. Of course, such cases probably will have to be brought under other sources of income. But, if that is done, the difficulty will be with the various deductions which should be made in the case of residential quarters. Therefore, to make the matter clear, the term "house property" has been omitted and we have got instead the words "buildings and lands appurtenant thereto."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Does it mean that the garden lands adjoining the house are necessary for the enjoyment of the house?

PRESIDENT: Those which form part of the same premises.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Lands on which land revenue is assessed are exempted from the operation of the Regulation. By a side-wind, as it were, it is proposed to introduce lands appurtenant to such residential quarters.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Land adjacent to the house will only mean that which is absolutely necessary for the beneficial enjoyment of it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There may be cocoanut *topes*.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think there is some such expression in the Municipal Regulation and there has been no difficulty.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): You cannot assess it where the actual value cannot be ascertained under the head of rental. A differential method of assessment is provided in the Regulation; but where certain lands are

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distinctly exempted from income tax, what is the meaning of bringing in the words "lands appurtenant to such buildings?"

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It means that portion of the land which is absolutely necessary for the beneficial enjoyment of the house.

PRESIDENT: Mr. Krishna Aiyangar's point is that certain lands which are now exempted from income tax would be included under this head.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In such cases it will be examined whether there are any garden plantations.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I believe it is assessed to Government revenue.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Not in all cases.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is in all cases.

PRESIDENT: Except in South Travancore, it is assessed in all cases.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If there is any difficulty, I believe the matter may be settled in the Select Committee. The intended meaning would not include any garden of any large extent adjacent to a building.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know the purpose of including this word?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Some improvements will have to be made on the land itself. I do not think that, as a matter of fact, a yard will add considerably to the yielding value of a house. I do not think it will make any difference. Anyhow, the matter will have to be seriously discussed and considered.

Another important case that has been made out is that the assessment of any particular year is based on the income of the previous year; the assessment is a provisional one and the necessary refunds have to be made. It is considered necessary that the assessment should be fixed with reference to the income once for all and that there should not be a running account, so to say, between the assessee and the Government; and there should not be any provisional assessment or any refund so that it may not be suggested that a particular assessee does not get a refund in proper cases. With a view to avoid all that, it is considered desirable that the tax should be fixed with reference to the previous year's income so that there may be no difficulty whatsoever.

There is another most important item which, I believe, is favourable to the assessee. If a particular assessee has two or three businesses and he loses in one and gains in another, under the existing Regulation, he has to pay tax on the profit in one business though he has sustained a loss in another business. Under the Amending

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Bill, if there is loss in one business and profit in the other, then the income tax is levied on the net profit, the two taken together.

Again, under the existing Regulation, if an assessee is asked to submit returns and he does not do it within the proper time, the assessing officer or the income tax collector makes an assessment. If a return is submitted after the due time and he refuses to receive it, the only remedy is the preferring of an appeal in order that it may be considered. The present amending Bill says that, even after the expiry of the time, before the assessment is made, it is open to the assessee to submit the return called for so that he may not be prejudiced. If even an assessment is made and if he satisfies the Collector that the non-submission of the statement or the return was due to a sufficient cause, he is at liberty to re-open the case and re-open the assessment. I believe that is decidedly a concession in favour of the assessee.

Going on to the question of appeal, under Section 21, it is only provided in the existing Regulation that a petition may be presented, and the powers of or the procedure to be followed by the appellate authority are not specifically detailed and an amendment has been made to the Section whereby it is provided that it is distinctly an appeal and the procedure to be followed by the appellate authority and the powers of the appellate authority are also mentioned. Further it was considered in some instances that the Income Tax Commissioner was not competent to review his decision. The question was raised whether he was competent to review a matter even though he was satisfied that there were apparent mistakes in his previous decision. To avoid all that, a provision has been made that it is open to him to review the decisions of the subordinate officers as well as his own.

Another important thing is about the non-resident foreigner. Section 32 of the present Regulation says that, in the case of a non-resident foreigner or company, if the company makes a profit and if there is a branch or an agent, though it may be that the income is derived elsewhere, the company is made to pay income tax as though the income was made in Travancore, and assessed accordingly. The assessment should be made in the name of the agent according to Section 32. Recently in Madras—in 46 Madras—there was a case where a particular firm said that it was only collecting materials and selling it in foreign places and the income was not received here and, therefore, it was not assessable to income tax. A Full Bench of the Madras High Court ruled that that income was not liable to income tax although Section 32 distinctly said that it should be deemed to be income for the purpose of the Regulation and that it should be assessed in the name of the agent. It was held that Section 32 is a machinery Section and not a taxing Section. So far as Travancore is concerned, although we are decidedly of opinion that that income is liable to be assessed, it is thought desirable to amend it and make it clear that such an income is also liable to assessment.

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Fortunately I am also glad to inform the House that, after submitting the Bill, I have come across a decision of the Calcutta High Court reported in 28, *Calcutta Weekly Notes*, in the issue of the current month, which states that it should be deemed to be income for the purpose of the Regulation and therefore Section 32 makes it taxable, and it is not supposed to be a machinery Section as was interpreted by the Madras High Court. In other words, the Section has been interpreted differently by different courts—by the Madras High Court in one way and by the Calcutta High Court in a different way. When there are two different High Courts interpreting the very same Section in a different manner, I believe it is absolutely necessary to make the matter clear. So the amendment to Section 32 has been made.

Then another amendment has been made to avoid double income tax. It now happens that, in some cases in British India or elsewhere a person is made to pay double income tax for the very same income though some incomes are exempted under Section 43. In order that it may be possible to extend it to other cases—I think, strictly speaking, Section 43 may not apply—it is considered necessary that, wherever Government enter into an agreement with another Government that they will reciprocate the matter, a rebate can be obtained to the extent that may be provided for under the rules.

Another most important thing is that, under Section 41 of the Regulation, statements, returns, etc., which are submitted by the assessee are confidential in their nature. That Section is not comprehensive enough to include depositions, affidavits, etc., which under the Regulation the assessees have to put in and which should not be made use of for other purposes. And therefore Section 41 has been made wider by the Amending Bill.

Lastly, the most important amendment is this. References to the High Court have been made obligatory upon the Commissioner, the only safeguard being that in such cases it should be a question of law and the person who applies for a reference should be asked to deposit a cost of Rs. 100 or such smaller sum as may be prescribed by the Rules.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Who is to decide whether it is a question of law? Suppose the Commissioner says that there is no question of law and the other side does not agree to it. The party will be deprived of the right of reference to the High Court.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe the Commissioner will have to do it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Do I understand him to suggest that the Commissioner's construction ought to be final? I believe, whether it is a question of fact or question of law, the Section whittles down the imaginary privilege conferred on the assessees in the matter of appeal to the higher authorities.

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[Mr. L. R Raja Raja Varma Koil Tampuran.]

PRESIDENT: I do not think that the draft Section as it runs would make the decision of the Commissioner final. It would be open to the party to go to the High Court and say it is a point of law, and that reference lies to it. That may be made clear.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is just the position that I want to be made clear. As it is, the right of making a reference to the High Court belongs to the Commissioner.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Personally, I think, if it is made obligatory upon the Commissioner to refer all questions of law to the High Court, and if he does not do it, there cannot be any objection to move the High Court saying: "Here is a question of law arising; the Commissioner refuses; please direct him to refer." And if the provision in the Bill is not quite enough, I believe the matter may be considered in the Select Committee stage so that in such cases it may be open to the petitioner also to move the High Court if a question of law arises.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Is there any difference between the revised Income Tax Act in British India and the present Draft Bill, on that point?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes; the Draft Bill does not contain that. There, there is a power to issue a writ of *mandamus* vested in the High Court, and not in the Income Tax Commissioner. The power of issuing a writ of *mandamus* is inherent in the Supreme Courts of Judicature in British India and whether it is the Income Tax Commissioner or any other public functionary, if that functionary refuses to discharge a duty vested in him, it is open to the High Court to ask that functionary to discharge his duty in the way in which he is required to do it. Probably that provision of *mandamus* does not exist in our law, and I believe that matter may be looked into when we discuss the Bill in the Select Committee.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is it not an inherent power?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know. The question will soon arise whether the High Court has got the right to issue *mandamus*. As Mr. Krishna Aiyangar knows, the matter is likely to come up before the High Court and I do not want to anticipate that.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): May I know whether Government intend to include, by means of this Bill, the tenants of Kilimanur *Edavakai* also so as to make it apply to the income derived from their lands? Now it is only done in the case of Punjar and Vanjipuzha *Edavakai* lands.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know the practice now. I do not think it will make any difference. If they are exempted now, they will be exempted hereafter also.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): Though they are not paying any tax to Government, are they included in the Bill?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That question will have to be examined with reference to the nature of tenure and the nature of holding the proprietor has got over the land.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): They are *pandarapattam*.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know whether they are assessed now.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*): They are not assessed now.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Probably the question will have to be considered later on. I am not in a position to say one way or the other now, because I am not in possession of all the facts regarding that particular matter.

PRESIDENT: We cannot say anything in regard to any specific case. It will have to be examined in all its bearings.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): We realise that the amendments proposed confer some material relief—

MR. JOSEPH PANJIKARAN (*Shertallai*): Louder, please.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): We realise that the amendments proposed confer some material relief on the assessees, but we feel that they do not go far enough. I believe, therefore, we shall be in order in suggesting certain necessary amendments which relate to the Sections now proposed to be amended. I do not propose to travel through the whole of the Income Tax Regulation. It is sufficiently abstruse. But as certain Sections are proposed to be amended, I believe we may suggest further amendments in order to alleviate the situation created by the Regulation as it is now worked.

PRESIDENT: That may be done in the Select Committee stage. We are now discussing the principle of the Bill.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): As regards the principle also, there are certain principles referred to by Mr. Subba Aiyar. There are certain other principles also which come within the purview of the Amendment Bill. These principles may have to be discussed to enable us to understand the position thoroughly and make necessary suggestions before the Select Committee.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I rise to a point of order. Is it open to the Select Committee to suggest further amendments to other Sections than those that are included in the present Bill?

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[Mr. S. Krishna Aiyar.]

PRESIDENT: No; Mr. Krishna Aiyar does not say that, I believe.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I do not.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Unless they are consequential. Supposing the amendments that are made in the Bill necessitate amendments in other Sections; of course those Sections will have to be amended.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I refer specifically to the Sections sought to be amended. Certain Sections are sought to be amended and we may be in order in suggesting further amendments to those Sections, or in suggesting the entire abrogation of the Sections themselves. We realise that some of the items of relief proposed are really very substantial. But some of them do not go far enough.

Regarding the right of reference to the High Court, it has already been suggested that the wording in the amendment requires further change. It may be only a change of wording. When a party pays court-fee—and it is fixed at the maximum of Rs. 100—the party must have a right inherent in him to see that the reference is made by the Commissioner to the High Court.

Another item of relief proposed is to confer on the Chief Revenue Authority power to review its own order but the *modus operandi* has not been suggested. Is it to be a review *suo moto* or is it a review to be granted on petition?

Then, again, if the power is to be confined to the Chief Revenue Authority, why not confer the power on the Commissioner also who too is liable to err and who too may therefore reconsider and pass another decision upon facts or law over which he has already passed a decision?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Does he remember that the Chief Revenue Authority and the Commissioner are one and the same person?

PRESIDENT: He is not referring to the Commissioner in that sense.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I refer to the Commissioner of Income Tax who passes decisions in appeals, and who also, being likely to err, may be given the same power to review his own order.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): At present he has the power to review his own decision as the Chief Revenue Authority.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): As it is, I may point out that the Income Tax Regulation does not confer upon the Commissioner power to review his own order. I would

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therefore suggest that a further provision be inserted conferring that power.

PRESIDENT: You mean the Income Tax Commissioner and the officers having appellate authority?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I mean all the appellate authorities, Collectors and Commissioners.

PRESIDENT: Do you include Collectors also?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Yes.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): At present the Collectors can rectify any mistakes within one year, under Section 26 of the Regulation.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Under Section 25, the Collector can modify his orders within one year with reference only to the income that has been omitted from taxation or the income which has been assessed at a smaller figure. Section 25 is a hard Section. The Collector or the Commissioner passes an order. They get an opportunity of reviewing their own orders within one year. There is no finality. In civil courts there is such a thing as *res judicata*. In regard to the Income Tax Regulation, there appears to be no finality. The authority may revise his own order frequently, and he may pass orders enhancing the tax once, twice or thrice. Within one year he may utilise that opportunity any number of times. Therefore I say that it is absolutely necessary that Section 25 must be entirely abrogated.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I was referring to Section 26.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I was referring to Section 25.

Then the Law Member was referring to another relief granted, *viz.*, the right to set off losses against gains. I submit that the proposed amendment does not go far enough. For example an individual may have joined a *chitty*. He draws the amount of the *chitty* and he puts it out on interest. The interest that he receives is assessable to income tax. He continues to make annual or monthly subscriptions and this is not taken into consideration in assessing income tax. He must be given an opportunity to set off the contribution he has to make to the *chitty* against the interest he realises from the *chitty* amount that he has drawn and invested.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): I think it relates to a private person and not a business firm.

PRESIDENT: I do not think that every point need be met by you now.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I refer to a particular instance. There are lots of *chittes* in Travancore where the *chitty* amounts are drawn from the foremen. Those amounts

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cannot be regarded as income. Nevertheless, when they are put out on interest, the interest is assessable and it is assessed, not minding the fact that the party has to pay contributions towards the further conduct of the *chitty*. Similarly, a man may have money due to him under hypothecation bonds. On emergent occasions, he may have to borrow money himself. The interest that is due from other parties to him is not paid in time. Such circumstances have to be taken into consideration. I therefore suggest that in the Amending Bill the wording be so improved as to include such possibilities also.

PRESIDENT: You are coming round to the position that unrealised income should not be taxed.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): It is even now not taxable except with reference to bankers who add the interest on to the principal; if the interest is not paid and is in arrear such interest is not taxable. It has been decided in Madras, and I know definitely that interest not received is not taxable.

Coming to the question of agricultural income, the term seems to be inexact. It has been defined in the Amending Bill as income arising from agricultural lands assessed to land revenue. The term 'land revenue' has not been defined anywhere in any Regulation in Travancore. The Revenue Recovery Regulation refers only to "public revenue due on lands." The General Clauses Regulation does not define land revenue. In respect of the revenue of the Kilimanur and Edapalli estates to which the provisions of the Revenue Recovery Regulation have been extended by the Estates Rent Recovery Regulation, it may be said truly that the revenue paid by the tenants or *kudiyans* living in Kalluppara or Kilimanur or Sripadam lands, may be taken as land revenue, or rather that it ought to be taken as land revenue, and therefore I suggest that the tenants cannot be taxed on their income derived from the cultivation of such lands. If I understand Mr. Subba Aiyar correctly, during the course of his address he said that as it is, or as the Regulation now stands, it is intended only to protect tenants who cultivate *pandarapattam* land and not *Edavakai* lands.

PRESIDENT: Lands paying land revenue to Government—that is the provision of the Section.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): In respect of tax why should the *Edavakai* be treated on an entirely different footing? The *Edavakais* are within Travancore. The facts of the *Edavakais* being free hold is due to no fault of the tenants. If the freeholder does not pay any tax to the Government it is not his fault. It is the fault of the Government, the present Government or the past Government. They recognise the fact that the *Edavakai* and other freehold *jenmies* and *jenmies* whose lands have not been assessed with tax need not pay any tax. Under these circumstances, it would be really very hard and extremely invidious to call upon the tenants occupying lands within the *Edavakai* to pay assessment on income derived from purely agricultural sources.

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MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May I know whether Government realise any income from those lands?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): It was not due to the fault of the tenants. It was the fault of the Government in accepting the fact of the existence of the *Edavakai* and in recognising the *Edavakai* freehold and other *jenmies* who have not got to pay any tax to Government.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Will they escape tax—land tax or any tax?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I referred only to the tenants of *Edavakais*. *Edavakais* themselves are paying the tax as they do not pay any revenue to Government; but so far as the tenants are concerned they pay their tax to their overlord. It is not their fault that their overlord is not Government. People occupying lands within the *Edavakais* should not be treated on a different footing. It is therefore that I suggest that they should be included and proper relief must be given to them, because their income is also agricultural income derived from cultivation.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Would it not affect those people who get income from agriculture from outside, say British India?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): certainly; if a Travancorean holds property outside Travancore and if the income of that property comes into Travancore and if he pays land tax, say in British India or Cochin, he ought not to be taxed in respect of agricultural income derived from property for which he has been paying land revenue to another Government.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Does he know that British India does not seem to reciprocate it? Travancore paddy taken to British India is assessed.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): May I refer to one of the latest rulings in the Lahore Chief Court on a kindred subject?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): May I ask Mr. Krishna Aiyar whether the incidence of income tax is the same—

PRESIDENT: Let him finish.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Our Regulation was modelled on the British Indian Income Tax Act of 1918. The Full Bench of the Lahore Court said that, when the income from outside British India is brought into British India by the owner, that individual who receives the income cannot be taxed, because there is no question of receiving. Receiving can be done only if there are two parties. One man must pay and another man must receive. It cannot be if one hand pays and another hand receives.

PRESIDENT: That is a different point.

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[Mr. S. Krishna Aiyar.]

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I said it was a kindred subject. When a man brings it into British India, he is not taxed. Following that principle, whether it is revenue derived from land outside British India or whether he brings it or his agent brings it, he cannot be taxed in British India.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Does he know why agricultural income in Travancore is exempted?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): My own belief is that, when the Government already receive certain amounts from lands in the occupation of a citizen, that citizen should not be asked to pay any *kist* or other assessment or contribution over again to the Government. Government thought it unfair to do it. Now, when the tenants of *Edavakais* are taxed, they have found themselves in a difficult position. They have to pay land tax to their overlords and they have to pay income tax to the Travancore Government. It is extremely unfair and I take this opportunity to point out that the provision should be amended as the Section is proposed to be amended.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Are they in the same category as those who get agricultural income from outside Travancore?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Katikapalli*): That is just my argument. For example, the owner of a land paying assessment to Government leases the property to A. A cultivates the property and makes it yield a profit. He pays only *pattam* to his lessor. His lessor pays Government tax. Nevertheless, the lessee is not assessed to income tax by the Travancore Government. The *kudiyan* or the tenant of lands within *Edavakais* cannot be treated worse than a man who farms land from a lessor of a *pandarapattam* holding.

Passing on, there seems to be one or two further provisions which seem to be controversial. For example, there is the process for the purpose of marketing the produce. As for the present amendment, any process may at any time be brought within the purview of the amendment and be made taxable. For example, cocoanuts have to be converted into *copra* to market them or cocoanuts may have to be converted into oil. That is a process to make cocoanuts marketable. Therefore, if the present amendment to Clause 3 of Section 2 is introduced, the profits derived from such conversion—I do not say by such conversion the profits derived by marketing the article after submitting it to this process—become taxable.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Taxable only in the proportion of the profit obtained from the manufacturing operation as in the case of tea.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): There is a further question. Is the conversion of cocoanuts into *copra* or the slicing and the conversion into oil taxable now?

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MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): That point has never been raised as yet.

PRESIDENT: We are trying to solve all the problems that might arise in the administration of the Act.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I am just preparing the House to enable it to discuss a few more matters at a further stage when the Bill comes up for detailed consideration.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Rather than deciding hypothetical cases here, would it not be better to leave it to the courts to rely on previous rulings?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*) If we have a definite, well-defined statement in the proposed amendment there may not be any necessity for referring these matters to the High Court. There are many other terms in the Amendment Bill as well as in the Income Tax Regulation that require re-definition.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Are there not similar cases in British India?

PRESIDENT: It does not prevent us from clarifying our ideas while we are at it. I quite see the point.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): The slicing and spicing of arecanut for the purpose of marketing may be referred to as a process. Cardamoms have to be dried sometimes in iron driers. That may be taken as an extraordinary process for the purpose of marketing. Rubber has to be cured and converted into smoked sheets. That may be taken to be a process of conversion for the purpose of marketing. Ginger has got to be bleached. That is another process. There is the question of tea. That too deserves to be considered. It is not merely profits that are taxed in the case of tea. There are several processes of manufacturing tea; instead of relieving tea planters, what is done is taxing them. They have to invest money to put up factories and also to incur other expenses. That question has to be considered and set at rest once for all. The process for the purpose of marketing produce will involve liability to assessment.

Then again a new offence has been created. If after 1100 an individual or a firm starts a business or a profession or a vocation—those are the terms used—if for some reason or other they are unable to carry on and if they do not issue notice of the fact that they have suspended operation to the Income Tax Commissioner, at once they are fined and penalised. When they start business, they need not give notice of it; but if they stop business, they have to give notice, and if they do not, they are penalised. That, I submit, is a case of extreme hardship. Here again comes the difficulty about the word 'vocation', which has not been defined anywhere. It may be so defined as to fit anything into it. So far as the word "profession" goes, there are rulings. But as far as the word 'vocation' is concerned, there is no ruling. I therefore suggest that, in respect of such terms, a re-definition may be useful in order to prevent further difficulty and doubt.

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[Mr. J. John Nidiry.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Ordinary words will have the ordinary dictionary meanings.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): What the word 'vocation' includes or does not include is not clear. Any individual may be said to be having some particular vocation or other in regard to all his actions. Supposing, for example, a person goes on an *Amavasya* day and makes some collection by reciting *mantrams*. Is it a vocation?

PRESIDENT: It is.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Roman Catholic priests get something for their priestly functions inside the Church; and as Fr. Vettikapalli may be able to tell us, they get some money on particular occasions even when they go outside the Church. That also may be called a vocation.

PRESIDENT: That also is a vocation.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Occasionally, a man may be lending out money. He may not do so systematically. It may not be his profession or vocation.

PRESIDENT: In what sense did you understand the word 'vocation' when you just now used it? It is in that sense that it is used in the Bill.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): My point is that, unless we precisely define these terms, there will be a tendency on the part of the Income Tax Officer to fit anything into it. I do not at all mean to say that the Income Tax Regulation is not being properly administered at present. I know it is being administered very satisfactorily. During the first year of its working, there were a lot of complaints and heart-burning as regards the working of the Income Tax Regulation. We have to create precedents, and in the absence of precedents, we ought to have specific definitions, and without them the assessees will be at a very great disadvantage. Therefore I suggest that, in respect of the Sections that are being proposed to be amended, there must be further amendments at least in the Select Committee.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I also wish to make a few observations on the Bill under consideration. I have the honor to represent a constituency in which there are one or two big *Edavakais* and many *jenmies* and tenants under them. I am sorry that some of the Sections of the Amendment Regulation have vitally affected the tenants and *jenmies* of the country. Let me first of all refer to Section 2, sub-section (1) (*a*) and (*b*).

The learned Law Member says that he has only attempted to make certain Sections clear and that this Section is one of them. I am afraid, Sir, that Mr. Subba Aiyar has, under the guise of an amendment, really

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made an innovation and attempted additional imposition of taxation, though he calls it only an attempt at clearness.

PRESIDENT: What is the additional imposition, Mr. Nidiry?

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I shall explain that.

As the Regulation now stands, income from lands is divided into two classes—(1) income derived from lands otherwise than by direct agriculture, and (2) income derived by agricultural operation on the lands. Sub-clause (*a*) of clause (1), Section 2, contemplates the first class of incomes. Such income is exempted only in case the land is assessed to land revenue. Sub-clause (*b*) contemplates the second class of incomes, *i. e.*, income derived directly from agriculture. Such income is clearly exempt from the payment of income tax irrespective of the question whether the land is assessed to Government tax or not.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Is the member aware that the new amendment is intended to make the position clear?

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): It is there that the danger lies. It is with respect to the additional words 'such lands' that I say that there is an imposition of additional taxation.

The present attempt is to impose tax on such income directly derived from agriculture in cases where the land is not assessed to Government tax. It is thus clear that the amendment is really a fresh imposition on the agriculturists. The effect of the alteration is to impose a fresh tax on the agricultural income of the cultivators in *Edavakais* like Punjar, Vanjipuzha, and of tax-free *jenmies*.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): There is a reference about this now before the High Court. The matter is *sub judice*. Are we justified, therefore, in discussing that question now?

PRESIDENT: The reference is about the terms of the existing Regulation. We are now seeking to amend it and the discussion at present is in regard to the amendment.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Could we argue about the correctness or otherwise of a matter which is *sub judice*? Are we not encroaching upon a matter under judicial enquiry?

PRESIDENT: We are not arguing about the interpretation of the terms of the existing Regulation which alone is the subject of judicial enquiry at present. We are discussing the amendment.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): We are supposed to be above the High Court in the matter of making laws. We make the law; the High Court only administer that law. The conditions of the tenants in these *Edavakais* and of the *Jenmies* is really deplorable as there are no legislative enactments in regard to the relationship of the tenants or land-holders of these *Edavakais*. They are to pay much more to the chiefs and *jenmies* than what they would have had to pay by way of land tax.

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[Rao Bahadur K. A. Krishna Aiyangar.]

The tenants should not be made to suffer simply because the Travancore Government wanted to make concessions in favour of the chief or the *jenmi*. The correct view to be taken is that the tenants should be presumed to be really paying land tax to the Government which they have allowed the chiefs to take for themselves. As it is, while a *kanam* tenant who has to pay only one-eighth of the tax of the ordinary assessment is exempted under the amendment, a tenant who cultivates in any of these freehold lands will be taxed on his agricultural income out of all proportion, according to the proposed amendment. This is really not equitable.

Another point to which I should draw the attention of the House is in regard to the taxation of dwelling houses. As the law now stands, if a man holds a piece of land with a few coconut trees and if he builds a house in the same compound, his yielding trees are exempted while the house is taxed. To tax the dwelling house is, to my mind, something like taxing the water one drinks or the air one breathes.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Does not the owner derive income from the dwelling house?

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): No, he only enjoys it. He cooks his food there and sleeps. That is all.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Would he not have to pay rent for a dwelling house if he did not have one of his own?

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): That is a different question. My point is that even the owners of dwelling houses should be exempted from being taxed for their dwelling houses.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I would just like to make a few remarks on one or two points which appear to me to be of considerable importance. The apparently very innocent amendment introduced in sub-section (1), Section 2, by the introduction of the two words 'such land' makes, according to me, tremendous difference as regards the public. Sub-section (1), Section 2, defines agricultural income as follows:—

"Any rent or revenue derived from land which is used for agricultural purposes, and if either assessed to land revenue or subject to a local rate assessed and collected by officers of Our Government as such."

That is the first class of income. Clause (*b*) says:—

"Any income derived from agriculture.....".

The income derived from agriculture spoken of in sub-clause (b) is regarded as agricultural income for the purposes of this Regulation. Section 3 as it stands does not apply to certain classes of income. It exempts several classes of income from the operation of this Statute and one of these heads is agricultural income. Agricultural income, as defined in this Regulation, is exempted from the purview of this statute. The change that is now sought to be effected is this. In sub-clause (*b*), my friend proposes to introduce the words 'such lands' after

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the words 'any income derived from' meaning land as defined in sub-clause (*a*). That is to say, he now proposes to exempt, from the operation of the statute, only lands which are either assessed to public revenue or subject to the payment of a local rate. Even that is not proposed to be got rid of. The direct effect of that amendment would be a great hardship to a very large class of proprietors who, according to my construction of the law as it stands at present, are exempted from payment of land revenue.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Are they to escape from all sorts of taxes?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): They pay taxes in ever so many ways. They are subject to the taxes under Excise, Salt, Judiciary, Stamps and ever so many other departments of the State. From the way in which Mr. Robinson interrupts me, it looks as if Mr. Robinson considers that land revenue is the only tax levied from the people. I may tell him that it only forms a very small fraction of the total taxes collected by the Government from the subjects of His Highness the Maha Raja, including those who are occupying lands which are at present exempt from interference by the Land Revenue Department in the matter of land assessment.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Is it not for a luxury when people have to pay taxes to the Excise, Salt, Registration, Stamps and such other Departments?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): According to Mr. Robinson, then, if a man goes to court, it is a luxury; if a man is assaulted and if he seeks the protection of the Magistracy, it is a luxury. I think, I must decline to regard what I consider to be necessaries of civilised life as luxuries, simply because Mr. Robinson says that the only necessary tax that a man pays is land revenue and that all other taxes are luxuries. According to him, apparently, any man who does not pay land revenue will not be regarded as being entitled to that protection which every citizen is entitled to get from the hands of the Government. I will discuss the question of policy at a later stage. At present, I am only trying to make out that it is not an innocent amendment that is sought to be embodied by the introduction of the two words 'such lands'. That is the point that I wish to bring to the notice of the House. Mr. Robinson has suggested that that forms the subject of reference to the High Court. I am not discussing the merits of the particular question that is now before the High Court. The question of liability of *Edakakai* lands for payment of income tax is not a matter that could be referred to the High Court. That is a question of principle which has to be finally affirmed by this Legislative Council. The only help that could be sought for from the High Court, as the law stands at present, is to decide whether the Government would be justified in levying income tax from particular parties. Until the High Court pronounces an opinion to the contrary, I am for the Council giving the plain meaning to the language of the statute. It is stated in the statute that agricultural income,

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from whatsoever sources it may be derived, is exempted from the purview of the statute. Mr. Robinson might suggest, and Mr. Subba Aiyar also, that, after all, it was by oversight and inadvertence that the words 'such lands' were omitted in the Regulation. I must decline to believe that. I must say that the legislature originally did not want to bring within its purview extensive tracts of territory which are now absolutely revenue-free. I must say, that was the *deliberate* intention of the legislature when the Act was passed.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Is Mr. Krishna Aiyangar aware that in the original Bill we simply followed the British Indian Bill?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Mr. Robinson seems to suggest that because we followed the British Indian Bill originally we must copy it now also, since the Bill has been amended in British India. I am not prepared to admit that, because the original source was British India and because they have amended it subsequently, we are also bound to copy it.

PRESIDENT: The question now before the High Court is the interpretation of the existing provision in the statute?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am at perfect liberty to interpret it in my own way and place it before the House, until the High Court tell us that I went wrong. Mr. Robinson has not assured the House that the High Court have passed a definite ruling on the subject against me. If the High Court say that, even as the law stands at present, these *Edavakais* are liable for payment of income tax, then I can understand that the words just now sought to be introduced are only intended to give statutory recognition to the judicial interpretation of the statute by the highest tribunal of the land.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Is he aware that the words are sought to be introduced simply to make the matter clear? The question has been finally decided by the Joint Committee of the Legislative Council at Simla.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am just submitting that it is not a matter quite so simple in itself that it could be disposed of by Mr. Robinson and myself sitting together and having a talk over it. It is a matter of sufficient importance to be taken before the Judicial Committe of the the Privy Council for an exhaustive exposition of the underlying principle.

PRESIDENT: It is not at all an easy question. I can adduce arguments *per contra* to show that it is a very difficult question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Until the High Court have made a pronouncement, I am submitting, we shall not be justified in introducing these words. If,

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according to Mr. Robinson, these *Edavakai* lands are liable for income tax even under the statute as it is without the amendment, I ask, why should we go in for the proposed amendment at all?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Just to make it clear.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Mr. Robinson says that it is intended to make the position clear; I say, it is a matter of confiscation. That is all the difference. He may be perfectly honest in the view he takes. Therefore what I submit is that, until the highest judiciary in the land has said that what Mr. Robinson suggests is correct, there is no necessity for bringing in these words. We will take the risk of the High Court ruling against us. Is my friend Mr. Robinson prepared to agree to the deletion of the words 'such lands', from the definition, if, according to him, the position is so clear?

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*). Would he propose to exempt these *Edavakai* lands from the operation of this Act?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no guarantee that that would be done. It is therefore that I object to the introduction of these words, which, I think, are intended to cripple the public. There is no use in keeping quiet now and then complaining after being crippled. That is why I raise the objection even now.

As I said before, if, even as the law stands at present, the *Edavakai* lands are liable to assessment, there is no necessity for introducing the words 'such lands'. If, on the other hand, as the law stands now, they are not liable, there is no justification for bringing them in. As I understand, if the amendment is to be made, the position would be to encroach upon agriculture, the main industry on which the bulk of the people in Travancore and in India rely. That is the main source of income for the people. It is not because the Government have been getting half a chackram per cent of land that it is proposed to exempt agriculturists from the purview of the Income Tax Regulation. For example, let us take the case of the extensive tracts of *jenmom* lands from which the Government are entitled to *Rajabhogam* of one-fourth, one-eighth, or one-half, following the analogy of *cherikkal* lands. The income from about one thousand acres of these lands may be about Rs. 30,000, and while the owner is exempted from the payment of land tax which may come to a few hundreds of rupees, it would be really unfair if he be asked to pay income tax for all the Rs. 30,000 that he gets from his lands. If that land is liable to be assessed for land revenue, then, land revenue may be collected from the owner, I can understand that; that is perfectly intelligible. If it is the object of Government to see that the amount of tax levied does not exceed the land revenue assessable on the land, then, that, I submit, is a perfectly logical position.

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[Rao Bahadur K. A. Krishna Aiyangar.]

MR. S. C. H. ROBINSON (*Land Revenue and Income Tx Commissioner*): Would Mr. Krishna Aiyangar agree to exempt people who get agricultural income in British India and bring that income into Travancore?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am not concerned with that question at all. For the present, it is the duty of the Travancore Government to encourage agriculture within its political boundaries. What it is outside the political boundaries of Travancore is a matter absolutely foreign to the purpose of the discussion. I merely tell this House that, as a matter of policy, agriculture within the territorial boundaries of the State should be encouraged. The question whether agricultural income outside Travancore may fall within the definition of agricultural income does not arise for consideration at this stage of the discussion. At any rate, it does not meet my argument.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Would Mr. Krishna Aiyangar agree to a separate clause exempting these people from income tax?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is only a matter of detail. If Mr. Robinson will agree to that concession and give an assurance to the House on behalf of Government, I have not the slightest objection to it. I am afraid he is not in a position to do so and it would not be fair for me to expect him to make such a promise.

My submission then is that, even as a matter of policy, Government are not entitled to collect indirectly as land tax what they could not collect directly as land tax.

Let us consider the position of these *Edavakais* historically. How did these *Edavakais* come into being? Sir, *jenmom* lands in Travancore mainly come under two categories; one species of lands which are liable for assessment only under certain circumstances and another class of lands which can be assessed under no circumstances. Ordinarily even the *Devaswom* and *Brahamaswom* lands situated within Travancore outside the *Edavakais* are exempt from taxation in the first instance, but the moment they are alienated, they become liable to payment of a quit rent to Government. That is the first class of lands and we are not now concerned with them at all. A great area of *jenmom* lands of that description has already been assessed to that quit rent. Such income from that class of lands has nothing to do with the question at issue. Then we have the *Edavakais* which are completely exempted from land revenue. The Land Revenue Department cannot register one inch of waste land within the *Edavakais* as *Pandarapattom* land. In other words the entire land revenue for that area has been surrendered by the Travancore Government in favour of the proprietors and probably it may be in consideration of services rendered to the Government at critical times or it may be a matter of treaty or some special

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understanding. The Travancore Government have definitely stated, Sir, "we shall not levy land revenue from your lands. You may continue to hold it revenue-free and collect tax from your tenants and appropriate it for yourself although Government would be entitled to it otherwise." It is because of actual surrender of land revenue, deliberately made by the Travancore Government in favour of certain proprietors that we find now these lands being exempted from assessment. At this stage, for us to go and tell them 'you do not pay anything by way of land revenue; let us have a tax from your lands, is really not fair. It is a matter of history and definite political understanding between the Government of Travancore and the proprietors of these *Edavakais*. When the Government themselves have thus surrendered the land revenue to those proprietors, why should their tenants be called upon to pay income-tax on the income that they get out of the property? That is my submission. If, for purposes of absolute logic, it is deemed essential that the owners of these lands should pay income tax for what they get from their tenants, that position would not be absolutely undesirable, because the proprietors of these lands are not paying anything by way of land revenue and they are also getting rent from their tenants. That position is perfectly intelligible. But to go to their tenants and ask them to pay income tax for the poor agricultural income that they get out of the lands when they are asked to pay rent to their overlords is, I think, rather very unfair and inequitable. If a particular holding is subjected to the payment of land revenue, the revenue may come to Rs. 5. But, if it is a question of income tax, it may come to Rs. 200. There is absolutely no sense of proportion or fairness. There is no reason why, because a particular individual happens to be an agriculturist within the *Edavakais* which are also situated within Travancore, he should not be entitled to the generous considerations of His Highness' Government—considerations which Travancoreans outside the *Edavakais* are entitled to get. Mr. Robinson thought that he could silence me by referring to the analogy of people bringing in rice and paddy from outside Travancore. But these inhabitants of *Edavakais* are people whose material and moral being as such is a matter of vital concern to His Highness' Government. Approaching the question from that standpoint and considering all possible aspects of the question, the analogy of Mr. Robinson seems to be absolutely unsound.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): May I know why he has newly embodied the words "in Travancore," for the words "to Travancore" in the Statement of Objects and Reasons?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not think that my friend really wanted to make any significance. It is rather difficult. It means payment of land revenue to Travancore Government.

I am just submitting this for approaching the question as a matter of public policy. The main occupation of the people in this State is agriculture, and this agricultural income, from whatever part of the

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[Mr. L. R. Raja Raja Varma Koil Tampuran.]

country, whether from *Edavakai* or *Pandarapattom* lands, ought to be exempted absolutely, as it is a burdensome impost.

I will make a passing reference to the lands adjacent to houses or appurtenant to such houses. In practical working it may be a cause of serious complication. The convenient method will be to exempt all lands which pay land revenue from the purview of the provisions of this statute, instead of laying down that houses and lands and appurtenances would be brought within the purview of the statute. It is rather difficult to follow what is exactly intended to be conveyed by this Section. The amendment to Section 7 runs as follows :—

The words 'income derived from house' after the word 'head' in line (1) shall be omitted ; the words "property consisting of any buildings or lands appurtenant thereto" shall be substituted for the words "any residential house property." What is proposed to be brought in is that property consisting of any place or land appurtenant thereto shall be liable to payment of Income tax on the income derived therefrom. Section 7, when read with the amendment, runs as follows :—

"The tax shall be payable by an assesee under the head in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, etc."

PRESIDENT : I think it requires looking into by the Select Committee.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I leave it to them. As regards the power vested in the High Court to issue a writ of *mandamus*, it is doubtful whether our High Court which is the creature of a special statute has that power. I hope the High Court will assert themselves and confirm that they have it. I do not know what the opinion of the the High Court will itself be. It is doubtful whether our High Court which is the creature of a statute will assert the right of calling upon the Income Tax Commissioner to make a reference. The British Indian Chartered High Courts do claim that right as the successors of the old Supreme Court, which in their turn acquired that right from the English High Court. I certainly object to a declaration by the Land Revenue Commissioner on a question whether it involves a question of law, a question of fact or a mixed question of fact and law. I object to such a declaration by the Revenue Commissioner. He may refer it to the High Court when the party demands it and leave it to them to say whether it involves a question of law only. He may make a decision in perfect good faith. But certainly, from a mistaken sense of his duty, he might say it does not involve any question of law. "I decline to make any reference in this instance to the High Court;" if he says so, the aggrieved party must have the right to move the High Court for compelling the Revenue Commissioner to make a reference to the High Court.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavakai*) I agree with my previous speakers. I wish to bring to the notice of th

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House the question of *Edavakais* in this connection. The long-standing grievances of Punjar, Vanjipuzha, Kilimanoor and Edapalli *Edavakais* have not been redressed. Now, the Government are proposing to impose another tax under another name. I think that the Select Committee will bestow their attention on this point.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): As soon as I entered this hall, Mr. Trivikramar Vasudevar who is sitting near me told me that a Malayalam copy of the Bill had not been given him, and requested me to look into this Bill and tell him the meaning of the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether the translation is not published in the *Gazette*?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): That does not concern me much. I am only making a statement of fact. (*Laughter.*) I must thank Mr. P. K. Narayana Pillai for having given me a copy of the Income Tax Regulation so that I could do something by way of preparation. Sir, the Bill has been published in such a way that the ordinary citizen is unable to find out the scope of the changes proposed to be effected. It is only lawyers and people accustomed to look at things with the eyes of a lawyer, that are able to find out whether there is any change. Insert 'such and such' and 'omit such and such'; these are the words. To the ordinary citizen it makes no meaning; and if the actual consequence was known, I venture to say, there would have been a veritable storm of protest from various individuals and bodies.

Sir, with regard to this question, I am in a position of advantage and disadvantage. Everybody wants to escape unpopularity. As this discussion centres round income tax and its incidence on land, I think I should mention that, in the Sri Mulam Popular Assembly of 1090, it was I who advocated income tax; and it was my esteemed friend Mr. Padmanabhan Tampi, from South Travancore, who got up and criticised me. In the Sri Mulam Popular Assembly for 1089, when I was dealing with the question of *Jenmies* and *Kudiyans*, I asked for greater rights being conferred on the tenants and thus made myself unpopular with a section of the *Jenmies*. When the Land Conservancy Regulation was discussed in this Council I took the side of the tenants against the *Edavakais*. To-day I am in a position of great disadvantage, because there are several gentlemen on this side of the House who are of the same way of thinking on this question as the Government members.

When I was feeling the pulse of my friend Mr. Narayana Pillai he looked at me through his chilling eye-glass (*laughter*) which convinced me that I could not get any support from him if I took up the position of the aristocratic section of society who is in a minority. I am glad, Sir, that Mr. Krishna Aiyangar, who had built up the reputation of a teacher long before he earned his reputation for forensic eloquence, got up and explained the matter. The aristocratic class is always unpopular. But we cannot fail to do them justice. The Government have recognised

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[Mr. T. K. Velu Pillai.]

certain families to be owners of land. Some institutions like Devaswoms are also the owners of land, and more than all that, the Travancore Maha Rajas from time to time have made grants of extensive properties for military and other services rendered to the ruling house at a time when it was indispensable. For example, the Kilimanur *Edavakai* is one which has an abiding memory for courage and patriotism, one of the Koiltampurans of which did much in that way at a time of stress and strain to the ruling family. The Edapalli *Svarupam* is also entitled to various rights. There is the Punjar *Edavakai* and there are also other people who have not been fortunate to be the owners of *Edavakais* but at the same time have substantial interest over the land.

I do not propose to discuss the theory of the grant made by Parasurama to Brahmins and others. But the fact is that, whatever be the theory as to the origin of Kerala, whether it is due to Parasurama throwing his axe, or to volcanic eruption, the law has now conceded that the *Jenmi* is the proprietor of the land. It is only under the *Jenmi* that a tenant was allowed to cultivate the land in olden times. As years advanced the *Jenmom* and *Edavakai* holders became unable to protect their own rights, because the cause of democracy, the cause of the tenant, loomed much larger in the estimation of statesmen than the rights of a few families. The result was that concessions were made to the tenant. It might have been a benevolent policy. But when the rights of the *Jenmies* and the *Edavakais* are being attenuated from decade to decade, is it not the duty of the Council to consider whether after all a quietus should not be given to such action and whether these land-owners should not be protected at least in the enjoyment of minimum rights? If, Sir, a Royal grant was given when the Maha Rajas needed their services and if such a grant is treated with disrespect for the reason that Government want money by way of income tax, I submit that the Government are responsible for the unjustifiable change of policy. Does it not require that members of this House should stand forth and ask that there should be a halt to that policy? This is the first question I should ask the House to consider.

Agriculture is agriculture whether it is done by the owner, lessor or mortgagee. Agricultural products are exempted by the Regulation in respect of income tax. If a tenant is cultivating the land in an *Edavakai*, the Regulation contemplates that he should pay income tax. But if one holds lands direct from the Government and pays a sum as land tax he is excused from paying income tax. It is equally hard with a *Jenmi* whose rights have become attenuated and who has to depend upon the uncertain payments made by the tenant simply because he is not able to cultivate lands directly, if he should be obliged to pay income tax.

The ownership of land has been recognised to be with the *Jenmies* and *Edavakais*, and there are numerous decisions on the subject

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Government have accepted that principle. There is one other fact which I wish to place before the Council. At a time when payments were fixed and when the Maha Rajas directed that money should be paid to the old families as a return for the lands which were confiscated by the Government, the purchasing power of money was much greater than it is now. Things which could be purchased forty years ago for four *chackrams* could now be purchased only for forty *chackrams*. That is another way in which the old aristocratic families are affected. Then again these families had to keep some status.

PRESIDENT: How are these arguments relevant?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I shall explain. These arguments are to show that, because the State at one time thought that rights of certain persons should be confiscated for the benefit of Government revenue, are we to travel beyond its legitimate scope and from time to time impose further restrictions on the proprietory rights of those people simply because their representatives in the Sri Mulam Popular Assembly and the Council are very few?

PRESIDENT: I do not think that the amendments aim at any such thing.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That aspect of the case was pressed by Mr. Subba Aiyar.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I referred only to the tenant and the actual cultivator, and not the *Edavakai* proprietors. The amendments do not propose that.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): There is no necessity for leaving that Section in that vague form.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether vagueness relates to tenants or to the owners of *Edavakais*?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It relates to the tenants and the owners of *Edavakais*. I am glad, Sir, that Mr. P. K. Narayana Pillai tells me that he is also of my view with regard to the vagueness of the Section.

PRESIDENT: I should think that Mr. Narayana Pillai is able to speak for himself.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): For the position I take, I think, I do not require Mr. P. K. Narayana Pillai's support. But as he was generous to endorse my view, I thought I might say that. (*Laughter.*) I suppose Mr. G. Paramesvaran Pillai will allow me to continue my speech.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Oh, yes.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If questions have to be put, they may be reserved to the end. (*Laughter.*) If they are relevant and if the President allows them, I shall be glad to answer.

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[Mr. G. Paramesvaran Pillai.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I have no questions to ask.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am very much obliged to my friend Mr. G. Paramesvaran Pillai.

Now, these families have certain duties to perform. They have to perform *Iswaraseras* and other functions. It is for all these purposes that the Maha Rajas gave them certain rights. If you say that from year to year certain inroads should be made, how are these *Edavakais* to get on? We must take a dispassionate view of the matter. There should be no difference between the communities which are numerically strong and communities which are numerically weak. The officers of the Income Tax Department will be certainly interested in getting as much money for the Government as they can. I am prepared to recognise that Government requires money. Is this the way of making money for Government purposes? Is it not an invasion of private right? I am not for doing anything which will have an indirect consequence of jeopardising the rights of the land-owner or the tenant. The land tax itself is, to some extent, an anachronism. And the tendency of Western States, particularly England—more than any—I am sure Mr. Robinson knows that—is not to get much revenue from land but to secure it from other sources. It is only by an accident that land is taxed. For land is a permanent thing. The man's occupation may be affected, if tax is demanded from him. He will not be able to pay it. So coercive process will have to be taken against him. So, in history, we find that land was put under ban because taxation over it was a surer source of income. But society has now changed and land-tax is a feeble source of income of any government. So I submit that the Income Tax Regulation may be amended in such a manner that even the little protection hitherto given to the landlords and tenants may not be withdrawn. As it will be a very serious matter that will affect His Highness' subjects most prejudicially, the questions of land have to be considered with very great carefulness. I may remind the Council that, even according to the Queen's Gracious Proclamation in 1858, the people of India were assured that the Government would not do anything to affect the land-owner. That is one of the solemn pledges given by Her Britannic Majesty. I may also mention that one of our late Dewans, Sir Seshaiya Sastri, in that beautiful address which he prepared for the people of Masulipatam, observed that all the concessions in the Gracious Proclamation in favour of the land-owner were so important that the whole of India would be thankful to Her Majesty. I am merely referring to these to show that the cultivator has always to be treated by the parental Government with liberality, and concessions, if any, should be given to him. But the man who derives his income from land, though it be through a middleman, should also be protected.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Hear, hear.

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MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): In doing so, let us not forget the past. Let us not forget the pledges given by the Queen Empress. Let us not forget the pledges given by the Maha Rajas of Travancore in conferring privileges upon the people who did service at a time of stress. Let us not delude ourselves into the belief that this is for the permanent interests of land. If justice costs us some money, if for this purpose we can only secure a smaller figure under income tax collection—I think that is a matter upon which we should congratulate ourselves. I am therefore of opinion that Mr. Subba Aiyar's attempt to amend the definition in sub-clause (*a*) of Section (1) does not commend itself to me, and I hope, with the fund of his experience of life and the sufferings of the people, he will see his way to give up the proposed change.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, when I heard that we are going to have an amendment to the Income Tax Regulation that was in force, I was very glad, especially in view of the fact that the working of the Regulation has thrown great burden on the people. The complaints that have arisen from it have been very voluminous and have often formed the subject of interpellation and discussion in this Council. I was glad that the cry raised against it had reached the heart of Government and that the Amending Bill would contain only one Section which would say that the Income Tax Regulation is hereby repealed. (*Laughter.*)

PRESIDENT: It will not be an Amending Bill then.

MR. JOSEPH PANJIKARAN (*Shertallai*): The Amending Bill, as put into our hands, in spite of the assurance which my friend Mr. Subba Aiyar gives, is far from lightening the burdens that have been imposed by the Income Tax Regulation.

Certainly, there are a few clauses in the Amendment Bill which make some show of relief. But I think they are after all only a sugar-coating to the bitter amendment in the Bill by which the burden of the heavily-burdened taxpayers is made more weighty. Clauses 14, 15, 16, 17, 18, 20 and 21, it must be said to the credit of the Law Member, are a little to the relief of the tax payer. But in view of the other amendments, I do not know whether it is these small amendments which the Law Member has in view or the bigger amendments which will bring greater amount by way of income tax.

The attempt on the part of the Law Member by means of this Amending Bill to enlarge the scope of the agricultural income has been lucidly and clearly pointed out by my learned friend Mr. Krishna Aiyangar and I do not mean to dwell upon it at length. Mr. Krishna Aiyangar has been saying that the utmost that the Government do would be to impose some sort of tax on the proprietors of those *Edavakais*. But I am afraid such an imposition also would be practically an indirect taxation on the tenants. In most of the *Edavakais*, the holdings under which the tenants enjoy lands are not fixed. They are holding the land under all manner of tenures. Some are holding lands as tenants-at-will. Under these

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[Mr. Joseph Panjikaran]

circumstances, what I think is that if, under the Income Tax Regulation, the *chiefs* of these places are taxed, they will call upon their tenants to pay. They will be asking the taxpayer to pay. On another ground also, I should say that the Income Tax Regulation should on no account be extended to *Edavakais* or any kind of income from the land. (Mr. T. K Velu Pillai: *Hear, hear.*) Mr. T. K. Velu Pillai has been saying that we have to respect agreements which the Travancore Government may have come to with the *chiefs* of *Edavakais*. I think he is quite right. It may be that to-day the Travancore Government can dictate fresh terms to them. But when such fresh terms are made, Government should always consider the circumstances under which those agreements were entered into in the olden days. Any attempt to impose fresh taxes on the *Edavakais* will be a violation of the treaties entered into with them. (Mr. T. K. Velu Pillai: *Hear, hear.*) When I say treaties I do not know whether there are written treaties between the Government and the *Edavakais*. I beg to submit that any imposition which the Government may make on the *Edavakais* will ultimately be an attempt to get something as income tax from agricultural produce. I beg to submit that such an imposition is not justified.

One more reason why agricultural produce should not be taxed. We have been copying this Regulation from British India. British India got its Income Tax Regulation from European countries. In European countries, the Income Tax Regulation was introduced for the purpose of meeting unavoidable necessities in connection with war and other things. For instance, in England it was introduced by Mr. Pitt for meeting the contingencies of the Napoleonic war. So also in France, Germany and other countries, it was imposed on account of heavy expenses which the Government had to meet in connection with war and other similar emergencies. From England it was copied into British India and even there it was introduced for the purpose of meeting the difficulties caused by the Mutiny. Now, there is no such reason in Travancore which will justify the introduction of the Act. In European countries again this kind of income tax was introduced as the king's share for the protection which the king afforded to trade. It is only the professional and trade income that is taxed there. Forgetting its history we are trying to apply it to every kind of income which a man gets. On principle, I submit it is bad.

Then again, there are certain portions of the Amendment Bill which I would object to. Certain Sections have an extended operation. For instance, under Section 3, sub-section (2), a number of classes of income are exempted from the operation of the Regulation. This amendment wants to delete items 6 and 8. Item 6 relates to legacies, and item 8 runs as follows: "Any perquisite or benifit which is neither money nor reasonably capable of being converted into money." These exemptions are now sought to be removed by the amendment.

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The reasons for exempting the legacies are, as the explanatory note says, that the legacies might be taken to include annuities. So, it was taken away and legacies have been excluded. So also with regard to Clause 8. Mr. Subba Aiyar now wants to include annuities and bring them under the Income Tax Regulation.

PRESIDENT: He wants to exempt annuities.

MR. JOSEPH PANJIKARAN (*Shertallai*): No.

PRESIDENT: That was what he said.

MR. JOSEPH PANJIKARAN (*Shertallai*): The next thing that he says is that agricultural income is not capable of being converted. I do not think that such an amendment should be made by means of an amending Regulation.

Then there is Section 41. I think that the amendment that is now sought to be introduced in place of Section 41 is much wider than the requirements of the country. There is already Section 41 there. That gives a protection which, I think, is sufficient for all purposes. I have not come across any single instance in which any person has made any complaint that he was inconvenienced on account of the records being called and kept in courts. They have never said that their title to properties is affected. Their better being is in no way injured and I do not see any reason for amending this Section by going out of the way without any such complaints being made. Why should such a thing be excluded from the purview of the Court if the documents are honest and correct? I do not see any reason why any deposition given by a man before the Income Tax Commissioner should not be used as evidence against him in a court of law. I do not see any reason why a petition or affidavit should not be looked into by a court of law in adjudicaitng upon a case. Enquiries of this kind are for the purpose of making the tribunals understand how they should judge upon a particular case.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I suppose Mr. Panjikaran is aware that, in the case of a business man, for instance, the publication of his assets and liabilities before a court will seriously prejudice his business.

MR. JOSEPH PANJIKARAN (*Shertallai*): It may, to a certain extent, bring difficulties, and it is for that purpose that there is a Section which gives reasonable protection. Then I doubt the soundness of the policy underlying this amendment.

There is Section 51 which says:—

"No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Regulation, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done, under this Regulation."

Of course there is no amendment with respect to that. But in view of the fact that we are not allowed to file a suit against an income tax officer for the assessment that he makes, I would only suggest now, that the power of the Income Tax Commissioner to refer the matter to

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[President.]

the High Court may be widened. I do not know any reason why even on a question of fact such a power of compelling the Income Tax Commissioner to refer the matter to the High Court should not be given.

PRESIDENT. In other words you want him to refer every matter?

MR. JOSEPH PANJIKARAN (*Shertallai*): The matter must be referred to the High Court as a court of appellate authority. It may not be done in every case. An appeal lies from the Collector to the Income Tax Commissioner. So also an appeal should lie from him to the High Court.

PRESIDENT: I do not mean to say that you should not propose it. I only want to know whether that is your point.

MR. JOSEPH PANJIKARAN (*Shertallai*): Yes. That is my point. Ninety per cent. of the cases will not be taken to the High Court, especially in view of the fact that it is not for the mere asking that the appeal is allowed. The appellant will have to meet heavy expenses if the High Court will have to look into the question. The Collector and the Income Tax Commissioner may not look into a question of fact, or a mixed question of fact and law in the same way as the High court would do. All these are things over which it is right and proper that the jurisdiction of the Civil Court should extend, especially in view of the fact that the rights of the subjects are taken away by Section 51 from litigating the matter in a court of law. At least a reference of this kind should be given to them. The law as it stands now causes very great injustice. The Income Tax Inspector makes an assessment. The whole question of fact is practically, though not theoretically, left to him. Of course, I do admit that we have the right to appeal to the Collector and the Income Tax Commissioner. But it is not always that we get redress of grievance from him. So the appeal to the highest tribunal in a Regulation like this, which was for the first time introduced into the country, is, I think, wholesome. Moreover the High Court will be able to give directions to the Income Tax Officers and Collectors. Instead of leaving the working of the Income Tax Regulation in the hands of men who do not know much about law, I think it is in the interests of all concerned if greater opportunities are given to the High Court to give an expression of opinion on the working of the Regulation. With these observations, I recommend the Bill for the acceptance of the House.

THE REV. FR. KURIAKOSE VETTIKAPALLI (*Todupuzha cum Kunnatnad*): Sir, as a layman I would beg leave to make one remark with regard to the Income Tax Regulation. I think a great injustice is being done to the income-tax payers in that they are not allowed to have recourse to any civil court to set aside or modify any assessment made under this Regulation. My suggestion is that this injustice should be removed.

PRESIDENT: How is it to be done? You must refer only to those Sections which are proposed to be amended.

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THE REV. FR. KURIAKOSE VETTIKAPALLI (*Todupuzha* cum *Kunnatnad*): Mr. Panjikaran referred to a Section which makes it compulsory on the part of the Income Tax Commissioner to refer it to the High Court.

PRESIDENT: To the High Court, not to the Civil Courts in general.

THE REV. FR. KURIAKOSE VETTIKAPALLI (*Todupuzha* cum *Kunnatnad*): If it is found later on by the High Court that is necessary, they will refer it to civil courts also.

PRESIDENT: No court sits in judgment over the Income Tax Commissioner except the High Court.

THE REV. FR. KURIAKOSE VETTIKAPALLI (*Todupuzha* cum *Kunnatnad*): Anyhow, some reference should be made to a proper civil court. That is what I want. The reasons that moved me to make this remark are as follows. Everything under this Regulation is summary. The assessor is an executive officer interested in seeing that Government get an increase of revenue. Instances have come to my knowledge where assessors refuse to reduce tax from the previous year's figures on the ground that they would be called upon to explain the reasons. Moreover when the authorities say they are not satisfied with the accounts produced, which is generally the case, they resort to the very convenient system of turnover profit. The practise is to fix it between 5 per cent. and 10 per cent. for each transaction. Let us take the case of a man who carries on trade with a capital of Rs 500. Suppose he transacts business twice a week. At the rate of five per cent. per transaction his profits will be Rs. 25, that is Rs. 50 a week, or Rs. 2,600 a year. If this were true, I am afraid even big officials would be tempted to exchange places with such petty merchants. This applies also to the appellate authorities. I am, therefore, of opinion that it must be open to parties to refer a question, even of fact, to civil courts. Provision may be made to remove all inconveniences that may be caused thereby. Collection need not be stopped pending the judgment of the case before the civil courts; and to avoid frivolous litigation the Court fees may be raised and a security taken for cases as in the case of election petitions. I do not see any objection to this. In similar cases, as land acquisition cases, references are being made to law courts. I would only suggest that that permission be granted to the parties.

MR. C. SANKARA MENON (*Quilon*): Sir, I wish to make a few observations in regard to the amendments to Sections 4 and 7. Reference has been made by Mr. Krishna Aiyangar to this amendment. But he seems to have dropped the matter as it need only be considered at the Select Committee stage. It appears to me that the principle involved in the amendment requires the consideration of the House. Now, under the existing Regulation, income derived from house property alone is liable to income tax. Under the proposed amendment, income from property consisting of any buildings or lands appurtenant thereto is

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[Mr. C. Sankara Menon.]

made taxable. I venture to doubt the legality of this amendment as it contravences the pledge given to the subjects of the State by the Settlement Proclamation. Sir, the last sentence in Section 31 of the Settlement Proclamation is very clear. It is said that no interference of any kind will be permitted with new settlements when completed, for the next 30 years. The *patta* granted under the new settlement will not permit any new kind of assessment on land. Now, the attempt is to impose tax upon lands which have already been assessed and for which *pattas* have been given and taxes already imposed. It seems to me, Sir, that this amendment ought not to be allowed. Besides, the amendment is liable to cause considerable oppression. In England or in British India, it may not cause much hardship as houses are built close to each other on both sides of a street. There is no difficulty there to find out what is the property appurtenant to a building. Here, the houses are located in isolated gardens.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether Mr. Sankara Menon is aware that the Income Tax Act of British India applies to Malabar also?

MR. C. SANKARA MENON (*Quilon*): It may be. Because they do not recognise local conditions, are we to follow them? Are we to copy an old mistake?

In these gardens are located buildings for residential purposes, agricultural purposes, and religious and charitable purposes. There are also tanks and buildings attached to the land. The intervening places are all used for planting cocoanut trees or other trees. Sir, you must certainly have seen that cocoanut trees are planted close to houses and in some cases even in the open spaces in the quadrangle of a house. Now, what are the lands *appurtenant* to the building is a matter which it is impossible to ascertain. Therefore, this amendment is likely to lead to great oppression, and on that ground also, that provision ought not to find a place in the Bill

It was suggested by Mr. Subba Aiyar that there is a similar provision in the Municipal Regulation also and the Government also suggested to the various Municipalities to impose tax on land. When they had to work it it was found absolutely impossible to ascertain what are the lands which may be liable to taxation. I know that some Councils had, therefore, to suspend even the proposal to impose tax on lands. Besides, the letting value of the house-property, except in towns, is very very small, whereas the hardship and oppression caused to the people in assessing a house property is very great. I would, therefore, suggest for the consideration of the House that income derived from house-property, which is situated within specified towns, declared by the Government from time to time, alone be made liable to income tax.

One other suggestion that I have to make is that interest on deposits in Anchal Savings Banks and Co-operative Banks should be exempt

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from income tax. They are now liable to taxation under residuary clauses. In the British Indian Act, although the Act does not provide for exemption, under the power vested by the Government of India Act, the Governor-General is empowered to exempt from taxation interest on Post Office Cash Certificates.

PRESIDENT: There is a Section which enables us to do so—Section 43.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Under the Regulation, Section 43 empowers the Government to make an exemption, reduction in rate or other modification in respect of income tax in favour of any class of income or in regard to the whole or any part of the income of any class of persons.

Mr. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I bring to the notice of Mr. Subba Aiyar the provision of Section 3 of the British Indian Act, which reads as follows:

"Where any Act of the Indian Legislature enacts that income tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the rovisions of, this Act in respect of all income, profits and gains of the prev ious year of every individual, company, firm and Hindu undivided family."

PRESIDENT: That is not the point which Mr. Sankara Menon has raised. His point is different.

Mr. P. K. NARAYANA PILLAI (*Ambalapuzha*): If the Act provides for taxation of incomes year after year, the Governor-General will have the power to exempt particular incomes.

PRESIDENT: In Travancore exemption may be granted under Section 43.

Mr. C. SANKARA MENON (*Quilon*): I submit that it is well that we should exempt these items also. For these reasons, I suggest that the income from these items also be exempted from taxation.

Mr. A. GOVINDA MENON (*Alangad* cum *Parur*): Almost all the points as regards the Income Tax Regulation Amendment Bill have been discussed, and I find there is only very little for me to add except bringing to the notice of this House one point about a certain principality. I think the principality of Edapalli is treated as an *Edavakai*. It has got a unique history of its own. It was once an independent principality.

Mr. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Govinda Menon, if Edapalli is a principality, what is the meaning he gives to the term 'principality'?

Mr. A. GOVINDA MENON (*Alangad* cum *Parur*): I do not know; but that is the term used in the Regulation made by this Council.

PRESIDENT: What has it to do with reference to the subject before the House?

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[Mr. P. K. Narayana Pillai.]

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I refer to the taxation of agricultural incomes. A word about the tenants in *Edavakais*. Whatever may be the justification of taxing the incomes of tenants in *Edavakais*, there is absolutely no justification in taxing the agricultural incomes of tenants in the Edapalli *Edavakai*.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): In the circumstances stated, I am merely asking Mr. Govinda Menon whether he is aware of any justification for taxing the other *Edavakais*.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I do not find any justification for taxing any *Edavakai*. I only want to emphasise the fact that in the case Edapalli *Edavakai*, it should not be treated on a footing equal to other *Edavakais*, because not only the land revenue of the Edapalli *Edavakai* is assessed but also all the other revenues. Even the Government is paying a total sum, rather a lump sum, to the Edapalli Chief in respect of abkari and other revenues derived from that principality after deducting certain charges due to the Police. This shows that all the *Edavakais* are not of the same kind and especially Edapalli *Edavakai* is quite different from all the other *Edavakais* in the State.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Govinda Menon if he is in favour of *Edavakais* other than Edapalli paying income tax?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Certainly not. I only pleaded specially on behalf of it, because I belong to that constituency and because Edapalli is one which has got a special history of its own. That is why I say that, whatever may be the result of our discussions and whatever may be the result of this Bill, when it is shaped finally, the Edapalli *Edavakai* should escape from the clutches of this Bill.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the main principles underlying the amendment introduced by my friend Mr. Subba Aiyar are two. In the first place, he gives the assessee some relief, not of course to a very considerable extent, by providing means to contend against improper assessment in some instances. Then, the other has relation to widening the basis of assessment to some extent by a small change in the definitions. These are the two main principles that may be referred to in the matter of amending the Income Tax Regulation. I shall take the latter aspect first; for that seems to have come in for a greater amount of discussion.

In the matter of agricultural income, as the law was understood and as probably it stands at present, the nature of the income alone was to be taken into consideration. That is to say, after determining the agricultural income, irrespective of the sources or the property from which the income was derived, it was excluded from the operation of the statute. But in the amendment which Mr. Subba Aiyar proposes is—

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PRESIDENT: May I know what the definition in the Indian Act is? Does it to exempt all agricultural incomes from income-tax?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That was so in the repealed act. But the present act is otherwise. The effect of the amendment now introduced by Mr. Subba Aiyar is to make a distinction with reference to the character of the land from which the agricultural income is derived. If the land from which the agricultural income is derived is assessed to land revenue, then the income will be excluded, but not otherwise. That is the main point that has been achieved by this amendment. With reference to this, Mr. Subba Aiyar also told us that this was the original intention of the legislature though the expression might have been unhappy, and to emphasise the distinction by bringing out the meaning clearly, the amendment has been undertaken. I distinctly recollect, Sir, that on a prior occasion I raised the identical point in connection with the memorial presented by the people of Punjar who, according to my reading of the Income Tax Regulation in Travancore, are not liable to be assessed, and brought the matter to the notice of the House. When I was discussing that question, the learned Deputy President, who to-day to my surprise veered round to my view of the matter, told us that the matter could not be discussed in the House because a discussion by the House would be absolutely useless.

PRESIDENT: The amendment of the Regulation was not then before the House.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It was not at all done.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): To-day I am glad to see that his reading of the Section is quite parallel to my reading of the Section. So the contention of Mr. Subba Aiyar that the law as enacted in the Income Tax Regulation at present has been to the effect that agricultural income will be exempted only if the land from which the income is to be derived is assessed to land revenue, is not a correct contention. It was on that basis that I maintained that the holders of land in the Punjar *Edavakai*, or, for that matter, in another *Edavakai*, should be exempted from the operation of this Income Tax Regulation and I am still of opinion that that is a very correct contention. Then, of course, there is the owner of the *Edavakai* himself who stands on a different footing. With respect to the owners of these *Edavakais*, their position itself has been the subject of some discussion, and I may refer to a recent instance in British India where the Singampatti Zemindar was before the Madras High Court in connection with this important income tax question. The learned Judges of the Madras High Court held that the Zemindar was exempt from the operation of the Income Tax Act in British India. A similar view has never been taken by any of the Travancore income tax officers. Though the Madras High Court has pronounced in that way, commentators on Income Tax Act in British India have not approved of that decision of the Madras High Court. For example, Visvanatha Sastri's commentary

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[Mr. T. K. Velu Pillai.]

takes exception to the correctness of that view. So, viewing the position of the owner of the *Edavakai* as distinct from that of the tenant of the property in the *Edavakai*, there is yet a question to be considered. Let me therefore, first of all, take the position of the proprietor of *Edavakai* itself.

PRESIDENT: As regards the tenant I thought you had already stated what you had to say.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to that, my friend Mr. Velu Pillai seems to think that the whole thing may be traced to some royal grant, concession, treaty or something of that sort.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I did not say that. What I told was that some of these *Edavakais* are due to the royal grant.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): All right.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask him one question? Are the commentaries on the Income Tax Act in British India useful for the discussion of this Bill?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Certainly.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Narayana Pillai if he did not say some time before when we discussed the question of buying books that, after all, they were of doubtful value? (*Laughter.*)

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No, I did not say so. I said that they were of doubtful value in the hands of persons who were unable to use it.

So with reference to *Edavakais*, some of them, at any rate, according to my friend Mr. Velu Pillai, may be traced to royal grant. Now, on the ground of a royal grant if any income is to be excluded, then there is much matter in the Income Tax Regulation for the legislature to amend. For, referring to Section 5 of the existing Regulation, pensions, annuities and all manner of things classed under the expression 'salary' now come in for taxation. They are all royal grants.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Pensions, for example, in the case of the Pantalam Raja, are practically political pensions. His territories were taken over by the Travancore Maha Raja and maintenance is given to the members of the family. The Sovereigns originally granted certain pensions to that family. These are now taxed under the Income Tax Regulation. If, therefore, on the score of some royal grant, income tax is not to be levied, I would submit—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): What I said was that no royal grant could be taxed. My main contention was that land cannot be taxed under this Regulation. But in some *Edavakais* in addition to the common argument that land cannot

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be taxed, there is the additional argument of a royal grant. I never said that no income given by royalty should be taxed. I said that rights over land which are due to a royal grant cannot be taxed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I thought that my friend urged the fact of a royal grant as an argument in favour of exemption from liability to taxation. If my friend withdraws that statement—

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I cannot withdraw. But that does not mean that no income under a royal grant should be taxed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If the fact of the royal grant is an argument to exclude the operation of the Income Tax Regulation, I say that there is much matter in the Regulation where this identical argument can be applied. Then, another argument that has been advanced has relation to the necessity of encouraging agriculture. May I ask, Sir, whether these holders of *Edavakais* or the *Jennies* who grant their property away on *kanapattam* tenure cultivate their lands?

PRESIDENT: Mr. Krishna Aiyangar did not say that the proprietors should not be taxed. He only mentioned the argument that agriculture should be encouraged.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only taking up one argument advanced by my friend.

PRESIDENT: I am only pointing out what he said.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Many of these gentlemen referred to the necessity of encouraging agriculture.

PRESIDENT: I am only refreshing your memory.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He referred to it; and others also referred to it as an argument for excluding them from the operation of the Regulation.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It was in answer to a specific question.

PRESIDENT: As an abstract proposition.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the necessity of encouraging agriculture and, so of excluding the operation of the Income Tax Regulation as regards holders of *Edavakais*, I am pointing out that the holder or *Jenmi* himself does not cultivate the land. He grants the property to other persons for cultivating the land, so much so that, with respect to the holder or the *Jenmi* that argument does not hold good.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is so even outside the *Edavakai*.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I and my friend do not agree there.

PRESIDENT: Mr. Narayana Pillai says that it is much more so in the case of *Edavakai* and *Jenmom* lands.

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only pointing out that that argument does not apply to the *Jenmi* or to the proprietor of the *Edavakai*. With reference to the encouragement of agriculture we shall take into consideration this aspect of the question. The Income Tax Act is an Act which does not operate against the poor man. It is an Act against the rich man, a man with large incomes. That being the case, it cannot be certainly predicated, as in the case of the salt tax, which was the subject matter of so much controversy in British India, that it affects the poor man. So, there is no justification in losing sight of this. On this head, however, I would point out, Sir, that, as I said and argued in connection with the memorial of the Punjar people, the ground for taxing the holders of land in the *Edavakai* does not appear to be correct, because it would appear iniquitous so long as the tenants of these *Edavakais* are paying their share probably at a higher rate than the revenue that is leviable upon the lands on *pandarapattam* footing. The *Jenmies* are realising probably more than their due share, when compared with *pandarapattam* assessment with respect to lands outside *Edavakais*. When that is the fact, I can understand the force of the objection to these tenants also being brought under the purview of the Income Tax Regulation. But with respect to the holders of these *Edavakai* lands or *Jenmom* lands I fail to see the point of the objection. I would also point out this fact that they escape assessment on the land revenue side. With respect to *Jenmom* lands, it is the tenant who has to make the payment to the Government. The light assessment that is imposed upon the land is borne by the tenant and the Jenmi-Kudiyan Regulation is very particular that, when the Government proceeds to enhance the rent, it is the tenant who has to bear it. The *Jenmi* practically steers clear of all that. Of course, in the case of a rich *Jenmi*, if his income goes beyond Rs. 2,000, it is only natural that he should contribute towards the general administration in view of the necessity for the protection of person and property in the State.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know if he is in favour of applying the Income Tax Regulation to *Sripadam* lands?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am perfectly willing to have it applied to them. If it is left to my option, I would most willingly be glad to see that they are brought under the Income Tax Regulation.

Then, the other aspect of the question that I wish to bring to the notice of the House is the peculiar way in which the Income Tax Regulation has to be worked. One main difficulty with respect to the working of the Income Tax Regulation is that the tax-gatherer is also the judge in his own cause. That is the main difficulty as has been pointed out by some people. With respect to the Income Tax Regulation in England his situation has been relieved to a very considerable extent. But in

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British India no attempt has been made to relieve this and the income-tax-gatherer goes about judging for himself and also pleading his own case as against the assessee. It is a relief in this direction that would be welcome. On a prior occasion when this question was agitated, it was prominently brought to the notice of the House that at least a final reference to the High Court at the instance of the aggrieved party should be provided for at the time of the Amending Regulation. Mr. Subba Aiyar's amendment in that direction, I am sorry, is quite inadequate. Anyhow, he has agreed that he would consider the question in the Select Committee. I must stop short with his assurance. But there are other directions in which the question may be taken up. In the Income Tax Act in British India, especially referring to Sections 31 and 32, I find that from the decision of the Collector an appeal lies to the Deputy Commissioner and from the Deputy Commissioner's decision an appeal lies to the Commissioner. Two appeals are provided for in Sections 30 and 32 of the Act. There is a regular appeal and a second appeal though it is not described as a second appeal.

PRESIDENT: In the latest Act?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes. These are the sections:

"31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the income-tax officer.

(3) In disposing of an appeal, the Assistant Commissioner may, in the case of an order of assessment,

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the income-tax officer to make a fresh assessment after making such further inquiry as the income-tax officer thinks fit or the Assistant Commissioner may direct, and the income tax officer shall thereupon proceed to make such fresh assessment,

or, in the cases of an order under sub-section (2) of Section 25 or Section 28,

(c) confirm, cancel or vary such orders:

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

32. Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of Section 31, may appeal to the Commissioner within thirty days of the making of such order.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit."

So there is the possibility of a further appeal from the Assistant Commissioner's decision under the British Indian Act. Here, we have got the Division Assistant, the Division Peishkar and the Income Tax Commissioner as Commissioners of income tax. These Commissioners hear appeals also. For example, from the Collector, the Division Assistant and the Division Peishkar hear a number of appeals. Where is the provision, I ask, in this particular Bill for an appeal being preferred from the appellate decision of the Commissioner to the Chief Revenue Authority, *i.e.*, the Income Tax Commissioner?

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[Mr. V. Subba Aiyar.]

PRESIDENT: He has got the power to review.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): A review as ordinarily understood is a reconsideration of the decision by a particular officer who passes the same decision.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is to say, decisions of the subordinate officer or his own.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is not so. Then the proper word should not be 'review' but 'appeal'. Therefore, I am submitting this aspect of the question that an appeal should be provided for and a power to review his own decision should be given to the Income Tax Commissioner. The Commissioners hear cases on appeal like the Division Peishkar. But it stops there. The aggrieved assessee is not given sufficient stages to challenge the decision of the Collector. As I said, the difficulty arises from the fact that the Collector is the person who originally fixes the thing and decides upon the assessment. Of course, the Collector himself is at a great disadvantage in the matter of collecting information. No doubt he has to perform the part of an astrologer in order to get at the true figures and by a sort of divination as it were the income has to be got at. All these difficulties I do not ignore. But, all the same, he is the deciding authority and then, so far as the assessee is concerned, he has to accept the lot that is fixed for him by the Collector. At each step, the possibility of challenging the decision of the Collector necessarily should be given legislative recognition in appropriate Sections of the amending Act.

Then, Sir, I find a few minor difficulties also. Section 5 and Section 15 go together. Section 5 makes mention of the liability of salaries including pensions, gratuity, annuities and all those things to be taxed. Section 15 lays down the method of taxing them at the source. In the case of such incomes taxed at the source, the assessee is not afforded the opportunity to contest the soundness of the subtraction at the source. In the case of an ordinary person, so far as the process of income tax is concerned, there is a possibility that he will be quite alive to what is being done and will be in a position to modify or oppose the decision of the Collector. But in the case of a person whose salary—I am using the expression as it is used in the Income Tax Regulation—is taxed at the source, no such opportunity is afforded.

PRESIDENT: Can you not get a refund?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How is he to appeal? It is impossible.

PRESIDENT: It is possible.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): What is there to appeal in the case of deducting from the salary at the source?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I thought that such a question would arise. Suppose, as in the case of the Pantalam Raja, who is only a pensioner and whose income is taxed at the source, he wishes to object with respect to certain items. For example, in his case, I know, the amount of money that is drawn by him as pension includes sums for the purposes of *Isvarasava*. Now, that is a religious *trust* and trusts of all descriptions are excluded from the purview of the Income Tax Regulation. Where is he to object, if his money with respect to *Isvarasava* is also included in the assessment and it is deducted at the source?

PRESIDENT: There is a provision which allows refund in that case.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Section 32 relates to refunds.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): Section 3 sub-section (2) (i). This Regulation shall not apply to the following classes of income:—

Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part, only for such purposes, the income applied, or finally set apart for application, thereto."

PRESIDENT: Mr. Narayana Pillai is aware of that. He wants to know how the assessee is to get redress when his income is taxed at the source.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): He should be aware of it.

PRESIDENT: But how can he be expected to be aware of the fact?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Section 21 does not refer to such a case.

MR. S. C. H. ROBINSON (*Land Revenue and Income Tax Commissioner*): It is under the appeal section.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is Section 21. But there, any assessee objecting to the amount or rate at which he is assessed under Section 18 or to an adjustment made under Section 19, or denying his liability to be assessed under this Regulation may, unless he, or, in the case of a company, the principal officer thereof, has knowingly and wilfully failed to make a return under Section 17, or substantially to comply with all the terms of a notice served on him under Section 18, apply—

PRESIDENT: Not in that way only.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only pointing out this difficulty. I was consulted in a case and I found it difficult to appeal on behalf of such a man.

PRESIDENT: As a matter of fact, Mr. Robinson has heard many appeals.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even those whose salaries included in the statement of returns are taxed get refunds.

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[Mr. P. K. Narayana Pillai.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only pointing out that this aspect of the question seems to have escaped the attention of the law member and an appropriate provision will have to be made to agitate, if need be, that assessments under Section 15 should be modified. Then in Section 8, I find, Sir, that in the matter of business credit will be given only with respect to the interest that has been utilised in a particular concern when the capital is borrowed. That is clause (3). The reasonableness of that is open to objection so far as it appears to me. A man may have money and he may utilise his own money in a concern, in which case he would not be given any credit for the interest on the money used in the concern. But, if he borrows money, the interest upon that particular sum will be given credit.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If a man had lent money, according to Mr. Narayana Pillai's opinion, I suppose that the interest he receives is chargeable to income tax. So also, if he invests it on his own business, I think that will be charged to income tax.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It comes practically to this. A person may lend money to another person and borrow from a third man so that he may get the necessary credit with respect to the money that he utilises in a concern—

PRESIDENT: People are not expected to do such things.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*):—if advantageous terms are available. It is only reasonable that the money laid out in the matter of particular business must be taken into consideration and a very moderate interest upon that also may be excluded.

Then the expression 'assessee' as defined here means a person by whom income tax is payable and includes a firm and a Hindu undivided family or an undivided marumakkathayam tarwad. My friend Mr. Subba Aiyar, a little while ago, was asking with regarding to appurtenant lands, whether Income Tax Act is not applicable to British Malabar also. Evidently the framers of that Act omitted British Malabar. That is what I think. If they did not make any rules for undivided Malabar tarwads—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe they have given it in the explanation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Anyhow, that is not the particular point at which I am at. I am only pointing out that there are several joint families in Travancore. Why should they escape assessment and a Hindu family should come in, I fail to see the reason. In spite of the difference in the legal incidents, there are corporate holdings of properties with varying degrees of jointness as in the case of Hindus and Christians, and why one variety should be taxed and the other excluded is what I cannot understand.

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MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Are not the rights and liabilities of the members of Christian families distinct and several?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : As a matter of fact, there are, in the case of Hindu families also, distinct rights and liabilities. In the case of Mahomedan families, I would suggest that, so long as there is corporate holding, though, of course, the potentiality for sudden break-up is there so long as it is held in joint condition, they should also come in for assessment. Otherwise, all these families will have to be excluded. Though it is really the head of a family in all these instances who is regarded as the owner of this income and who is assessed for the income, the income belongs to other members also. In such cases, it is rather hard to say that one man is practically a receiver of all the income with respect to *tarwad* properties. So it is better to exclude all of them, if it is not inexpedient from the standpoint of the revenue. If it is a question of revenue, others also may be got in so that it may work equally.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*) : What about joint stock companies?

PRESIDENT : Time is up.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I am just closing, Sir. There are a number of minor points about which I will invite the attention of the members of the Select Committee to bestow all possible care. The difficulty lies mainly in the minor points and not in the main principles of this Act. With these observations, I support the measure.

The Council adjourned for lunch at 2-35 P. M. and re-assembled at 3-13 P. M.

MR. TRIVIKRAMAR VASUDEVAR (*Ponnani*) : ആദായനികുതിയുടെ ഉദ്ദേശം ഒരുവിധത്തിലും ഗവർണ്മെൻറിന് ആദായം സിദ്ധിക്കാത്ത വരവുകളിൽനിന്നു നികുതി കിട്ടണമെന്നായിരിക്കും. ഭൂസ്വത്തിൽ നിന്നുള്ള ആദായത്തിൽ ഒരംശം ഇപ്പോൾ ഗവർണ്മെൻറിനു കിട്ടുന്നുണ്ട്. പണമായിട്ടോ നെല്ലായിട്ടോ മറ്റുവല്ല പ്രവൃത്തികളായിട്ടോ ഇങ്ങനെ അതിൻറെ ഒരു ഫലം അല്ലെങ്കിൽ ഒരംശം ഗവർണ്മെൻറിലേക്കു പണ്ടേതന്നെ ലഭിച്ചുകൊണ്ടിരിക്കുന്നു. ഈ വിധത്തിലല്ലാതെ ഒരു ഭൂസ്വത്തും തിരുവിതാംകൂറിലുണ്ടെന്ന് എനിക്കു തോന്നുന്നില്ല. കരമൊഴിവുവസ്തുക്കളെന്നൊരിനം വസ്തുക്കൾ ജന്മിമാർക്കും ചില ഉത്രാണമേവസ്വങ്ങൾക്കും ഇടവകകുടുംബങ്ങൾക്കും ഉണ്ട്. അവയുടെ ഒരാദിപുരാണമോ ചരിത്രമോ എൻറെ സ്നേഹിതന്മാർ ഇവിടെ പലവിധത്തിലും പറഞ്ഞുകഴിഞ്ഞിരിക്കുന്നു. മിക്കവാറും ഇടവകക്കാരോ ജന്മികളോ ഒരുകാലത്തു രാജകുടും

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[Mr. Trivikramar Vasudevar.]

ബത്തിനു ചെയ്തിട്ടുള്ള ഓരോ സഹകരണങ്ങൾക്കോ അല്ലെങ്കിൽ സഹായങ്ങൾക്കോ പകരം അവക്ക് അതിന്റെ പ്രതിഫലമായിട്ട കരമൊഴിവായിട്ട ദാനം ചെയ്തിട്ടുള്ള വസ്തുക്കളാണ് ഇങ്ങനെയിപ്പോൾ കരമൊഴിവായിട്ട കിടക്കുന്നത്. അതു ജന്മികളെ സംബന്ധിച്ചിടത്തോളം എങ്ങനെയാണെന്നുള്ളതിനു ഞാൻ ഒരു സാക്ഷിയാണ്. മുമ്പു കരമൊഴിവായിട്ട് ഇന്നവസ്തുക്കൾ തന്നിരിക്കുന്നു എന്നുള്ളതിനു ചെമ്പുപട്ടയം എന്നൊരു നീട്ടികൊടുക്കാറുള്ളത് എന്റെ കുടുംബത്തിലുമുണ്ട്. ഇതുമാതിരി പട്ടയങ്ങൾ ഈ തിരുവിതാംകൂറിലെ അനേകം കുടുംബങ്ങളിൽ കാണാം. അങ്ങനെയുള്ള വസ്തുക്കളേയാണ് കരമൊഴിവായിട്ട് ഇപ്പോഴും കണക്കാക്കിയിരിക്കുന്നത്. അതിൽ ചില അധികാരങ്ങളും അവകാശങ്ങളും ഒക്കെക്കൂടി ഞങ്ങൾക്കുണ്ട്. ഇതുകൊണ്ടുതന്നെ ഈ കുടുംബക്കാർ രാജകുടുംബത്തെ എത്രയോ മുമ്പു സഹായിച്ച് പലവിധത്തിലും ആശ്രിതന്മാരായിരിക്കുന്നു എന്നതാണ്. അവർ വസ്തുക്കൾ വച്ചു പരിപാലിച്ച് ഇന്നയിന്ന സൽകൃത്യങ്ങളും ചെയ്ത് അനുഭവിച്ചുകൊള്ളണമെന്നാണ് ആ നീട്ടിലെ തത്വം. ഈ കരമൊഴിവു വസ്തുക്കളെ അന്യാധീനപ്പെടുത്തിയോ അതാവകാശപ്പെടുത്തിയോ ആക്കെങ്കിലും കൊടുത്തുകഴിഞ്ഞാൽ അതിന്റെ എട്ടിലൊന്നു കരം ഗവർമ്മെന്റിനു കിട്ടണമെന്ന ഒരു നിയമം ഉണ്ടാക്കുകയും കണ്ടെഴുത്തിൽ അതു തീച്ചപ്പെടുത്തുകയും അതനുസരിച്ച് അനേകം വസ്തുക്കൾക്കു കരം ചുമത്തുകയും ചെയ്തിട്ടുണ്ട്. അവരുടെ ദാരിദ്ര്യംകൊണ്ടും അവർ ഈ സംഗതി ഓക്കാതേയുമാണ് വസ്തുക്കൾ അന്യാധീനപ്പെടുത്തുന്നത്. അല്ലെങ്കിൽ കാണപ്പാട്ടമായിട്ട കൈമാറ്റം ചെയ്യും. അതിനൊക്കെ എട്ടിൽ ഒന്നു കരം ഈടാക്കിവരുന്നുണ്ട്. ആ ഉദ്ദേശം നന്നാണെന്നാണ് എന്റേയും അഭിപ്രായം. ഇന്നയിന്ന സൽപ്രവൃത്തികളും ചെയ്ത് അനുഭവിച്ചുകൊള്ളണം എന്ന ദാനപ്രമാണത്തിൽ കല്പിച്ചുകൊടുത്തതിനെ അന്യാധീനപ്പെടുത്തി ക്രയവിക്രയം ചെയ്യുന്നതിൽ ഞങ്ങൾക്കു സങ്കടമുണ്ട്. അവരുടെ വസ്തുക്കളിൽനിന്നു കിട്ടുന്ന ആദായം സാധാരണ അവക്കു ചിലവിനുമാത്രമേ കാണുകയുള്ളൂ. തിരുവിതാംകൂറിൽ ഉള്ള മലയാളബ്രാഹ്മണർ ഉടുപ്പുമുതലായ ആഡംബരങ്ങളിൽപോലും ഭ്രമിക്കാതെ അത്യാവശ്യമായ വസ്ത്രങ്ങൾ മാത്രമേ ധരിക്കാറുള്ളൂ. പിന്നെ അവരുടെ വക ക്ഷേത്രങ്ങളിൽ മാമൂലനുസരിച്ച് ഓരോ സംഗതികൾ നടത്താനായിട്ടുള്ള ചിലവിനുവേണ്ടി മാത്രമാണ് ഈ സ്വത്തുക്കൾ ഉപയോഗിച്ചു വരുന്നത്. ഈ ഉദ്ദേശത്തോടുകൂടിയാണ് വസ്തുക്കൾ അവക്കു കരമൊഴിവായി ദാനം കൊടുത്തിട്ടുള്ളത്. ആ വക കാര്യങ്ങളിൽ ഒരിക്കലും ലോപം

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വരാൻ പാടുള്ളതല്ല. അങ്ങനെ അനുഭവിച്ചുകൊണ്ടുവരുന്ന വസ്തുക്കൾക്ക് ആദായനികുതി ഏർപ്പെടുത്തുകയാണെങ്കിൽ അത്യാഹാരദോഷം കൂടി നേരിട്ടേക്കും. മഹാരാജാവു തിരുമനസ്സുകൊണ്ടുതന്നെ യാതൊരാദായവും വേണ്ടയെന്നു കല്പിച്ചു ദാനം കൊടുത്തിട്ടുള്ള വസ്തുക്കൾക്ക് ആദായനികുതി ഏർപ്പെടുത്തുന്നതൊരിക്കലും നല്ലതല്ല.

ഈ വസ്തുക്കളിൽനിന്നുമുള്ള ആദായമെടുത്താണ് ക്ഷേത്രങ്ങളിൽ പൂജ മുതലായതു നടത്തിവരുന്നത്. അതിനും ആദായനികുതി ചുമത്തുകയാണെങ്കിൽ ക്ഷേത്രങ്ങളിലെ പൂജകൾ നടത്തുന്നതിനുപോലും വളരെ പ്രയാസമായിത്തീരും. കാണപ്പുറവസ്തുക്കളുടെ കരംപിരിവു സംബന്ധിച്ചു വളരെ ബുദ്ധിമുട്ടനുഭവിക്കുന്നുണ്ട്. കരം ശരിയായിട്ടു തവണതോറും കിട്ടുന്നില്ല. പൂജ മുതലായതു കടം മേടിച്ചാണ് നടത്തുന്നത്. കാണപ്പാട്ടവസ്തുക്കളിൽനിന്നു കിട്ടേണ്ട ആദായം സിവിൽക്കോടതികളിൽ വ്യവഹരിച്ചിട്ടതിനു മേൽ മാത്രമേ മിക്കവാറും ഈടാകുന്നുള്ളൂ. അങ്ങനെ ഈടാകുന്ന സംഖ്യ ക്ഷേത്രങ്ങളിലെ പൂജാദികൾക്കായി വാങ്ങീട്ടുള്ള കടം തീർക്കാനേ കാണുകയുള്ളൂ. ഇടവകക്കാരുടെ കായ്ക്കുമേക്കുറിച്ച് എനിക്കു അനുഭവമില്ലാത്തതിനാൽ അതിവിടെ പറയുന്നില്ല. ആദായത്തെ കണക്കാക്കീട്ടുള്ള ചില മെമ്പർ സ്ഥാനങ്ങൾക്കുവേണ്ടി മൊത്തം വരവിനെയാണ് ആദായമായി കണക്കാക്കീട്ടുള്ളതെന്ന് എനിക്കറിയാം. അല്ലാതെ ചിലവു നീക്കിയുള്ള ആദായമായിരിക്കയില്ല. ഇവരിൽ ഒരു ശതമാനം പേരും ആദായംകൊണ്ടു ചിലവു നടക്കാത്തവരായിരിക്കും. ചിലവുകഴിച്ചു മിച്ചമുള്ളവർ പത്തു ശതമാനത്തിലധികം കാണുകയില്ല. അങ്ങനെയിരിക്കുന്ന വസ്തുക്കളിൽ ആദായനികുതി കണക്കാക്കി ചുമത്തുന്നത് ഒരിക്കലും നന്നായിരിക്കയില്ല എന്നാണ് ഞാൻ ഇവിടെ അറിയിക്കുന്നത്. ഈ വിഷയത്തിൽ കൂടുതലായ അഭിപ്രായങ്ങൾ എന്റെ സ്നേഹിതന്മാർ ചരിത്രസംബന്ധമായിട്ടും ന്യായസംബന്ധമായിട്ടും അറിയിച്ചുകഴിഞ്ഞിട്ടുണ്ട്. അതുകൊണ്ടു ഗവർമെന്റ് ഈ വിഷയത്തിൽ പ്രത്യേകം ഒന്നു നിഷ്കർഷ കാണിക്കണമെന്നു ഞാൻ അഭിപ്രായപ്പെട്ടുകൊള്ളുന്നു.

MR. K. PARAMESVARAN PILLAI (*Travancore*): Sir, in view of the discussion in the Council in regard to this Amending Regulation, I feel that it would have been desirable if, instead of amending the Sections of the old Regulation as they now stand, a general revision of the Act itself had been attempted. That would have been more to the point. There are only 50 Sections in the Income Tax Regulation out of which amendments are sought to be introduced in respect of 30 Sections and 20 Sections alone have been left intact. In that view a general revision of the Act might have given the members a deliberate chance of

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[Mr. K. Paramesvaran Pillai.]

expressing their views upon the general principle of the Income Tax Regulation and also would probably have enabled the members to suggest amendments to these Sections as well. From the discussion that I have heard, it has occurred to me that, when several members feel the need of amending all the Sections of the Act also, that it might have been better if Mr. Subba Aiyar had taken up the whole Act for revision than choosing particular Sections for amendment.

Now representing as I do a taluk which contains within its boundaries the largest extent of *Edavakai* lands, I feel it my duty to say a word in respect of *Edavakais*. In regard to them a large controversy has been raised in this Council to-day. So far as the owners or proprietors or *chiefs*, as they are called, of these *Edavakais* are concerned, it appears to me that the question does not arise at all, because under the existing Regulation the Government have got the power of taxing the proprietors or the *chiefs* and there is a doubt only in regard to the tenants. I also believe that these chiefs have already been assessed to income tax and are paying the same. Section 2, clause (1), sub-clause (*a*), says that "agricultural income means any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue or subject to a local rate assessed and collected by officers of our Government as such." So that, revenue or rent derived from land which is already assessed to land revenue is alone exempted from the assessment under the Income Tax Regulation. It cannot be said that the revenue or rent derived now by the proprietors of these *Edavakais*, is assessed to land revenue and therefore it is not exempt from taxation. It has already been assessed to income tax and Mr. Subba Aiyar has not sought to introduce any amendment in regard to that portion of the Section. Therefore the question as to whether it is proper to assess the income or revenue derived by these proprietors of *Edavakais* is irrelevant and does not arise for discussion in regard to this Amending Bill.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Paramesvaran Pillai whether he knows the incidence of any income tax paid by the *chiefs*?

PRESIDENT: Mr. Paramesvaran Pillai holds that the discussion of the question is altogether irrelevant.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have not come to the tenants.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Paramesvaran Pillai whether he is aware of the incidence of taxation?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): So far as some of the *Edavakais* are concerned, I know that the incidence cannot be shifted. For instance in the case of the *Edavakais* of Edapalli and

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those of Kilimanur and other *Edavakais*, I do not think that the incidence can be shifted because they are not liable to any more tax than has already been imposed upon the land during the time of the settlement and the Government are bound to recover these taxes from them and they are not empowered to refuse the tax upon the lands. Probably in the case of *Jenmis* it may be a different matter, especially in cases where the properties are held under simple leases, or under *kanapattam* leases.

Now, coming to the tenants themselves, it appears to me that the matter is more or less one of a purely academic interest. For, as far as I know, the number of tenants who derive any income which is liable to taxation under the Income Tax Regulation will be very very small because the income that can be taxed is only an income which is above Rs. 2,000. There will be very few tenants of these *Edavakais* who derive an income of Rs. 2,000 or more.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy president*): Is he aware that there are a number of tea and coffee estates in Peruvantanam and Punjar *Edavakais* which yield an enormously great income?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I am coming to that. So far as the ordinary tenants of these *Edavakais* are concerned, it is matter of a purely academic interest. Mr. Krishna Aiyangar has raised the question as to whether there are not several Planters who hold large areas under the *Edavakais* and whose income amounts to more than Rs. 2,000. I know that there are some planters who hold lands under these *Edavakais* and it appears to me to be just and proper that these planters who cultivate very large areas and derive large incomes out of these lands should be taxed and it should form a very decent revenue to the Government for supporting the administration of the State.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I ask Mr. Paramesvaran Pillai whether he knows that there are large areas under *cherikhal* cultivation?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There may be.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): And that they derive large agricultural profits?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*). I am not sure. So far as I know, I think they are cultivated only once in three or four years, and if we take the average income I am not sure that there will be many tenants who derive incomes of about Rs. 2,000 or more.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): What is the average income from cocoanut gardens in the *pakuthi* of Chirakadavu, for example, for one acre of cocoanut land?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no idea and I have never been there.

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[Mr. K. Paramesvaran Pillai.]

PRESIDENT: May I take it, Mr. Paramesvaran Pillai, that you are in favour of assessing people who derive an income from land other than the actual cultivators?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes, Sir; I am in favour of that. Mr. Subba Aiyar told us that even as the Section now stands the tenants of *Edavakais* are liable to taxation and he does not propose to make any change in the existing practice and seeks only to make it more plain. The question as to whether they should be taxed or not does not arise again for consideration, if that is what is meant by and if what Mr. Subba Aiyar wants is to make the meaning more plain that it may not lead to any misinterpretation by the Income Tax Commissioner or by the High Court. Then again I submit, as in the case of the proprietors' question, that the question does not arise as to whether the tenants should be assessed to income tax or not.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Paramesvaran Pillai whether he thinks that the word of Mr. Subba Aiyar is the final word on the point?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is entitled to the consideration of the House.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is it conclusive? Is he prepared to accept it on all occasions?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I rise to a point of order. In discussing a definition, have we not got power to extend the scope of the existing definition when the whole question is re-opened?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not think.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am asking the President.

PRESIDENT: I do not follow you.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): When a definition is under consideration and when an amendment is sought to be made, can we not extend or restrict the scope of that definition if we are so advised?

PRESIDENT: Yes, I think so.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is what I have got to say in regard to Section 2, clause (i), sub-clause (*a*). Now the expression "buildings or lands appurtenant thereto" is liable to great misinterpretation.

PRESIDENT: I think Mr. Subba Aiyar himself said that would have to be omitted or altered.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Then that is all right.

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Then in regard to revision. The Chief Revenue Authority under the Income Tax Regulation is the Commissioner himself. It appears to me that there should be a Chief Revenue Authority independent of the Commissioner, because he is the final appellate authority in regard to income tax matters.

PRESIDENT: He hears appeals only in certain cases.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In certain cases he is the highest appellate authority. We may take it that in important cases where the Peishkar himself decides the matter, he is the appellate authority. In such cases it is not proper that he should also be invested with the power of revising his own appellate orders. It will be better that the Chief Revenue Authority is the Dewan himself who may be invested with the power of revising all orders of the Commissioner as well as the lower appellate authorities.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): As regards judicial officers, the High Court has got the power of reviewing.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is not the question of reviewing that I am speaking of. It is revision.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is it the same thing?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is not the same thing. There is a Section which empowers the chief revenue authority to send for the records and to revise decisions. I am speaking of that. It is called review, but it is not really a review. It is really the revisional power that is exercised, though it is called review in the marginal note. The expression in the marginal note is incorrect. It ought to be revision. I will read the Section. That is Section 23.

"The Chief Revenue Authority may call for the record of any assessment proceeding which has been taken by any officers subordinate to it, and make such enquiry and pass such orders thereon as it thinks fit:

Provided that it shall not pass any order enhancing the sum payable by an assessee without hearing him or giving him a reasonable opportunity of being heard either in person or by pleader."

This is not the power of review but it is the power of revision. The marginal note is wrong. It ought to be power of revision, and this revising authority, I say, should not be the highest appellate authority. But it must be the Chief Revenue authority which must be independent of the Commissioner.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): If this definition stands, is the Dewan precluded from revising?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Because there is the rule that the Chief Revenue Authority is the Commissioner.

PRESIDENT: The Dewan is not the Chief Revenue Authority now.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The Chief Revenue Authority is to be appointed by the Government and the officer appointed is the Income Tax Commissioner.

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[Mr. K. Paramesvaran Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know whether the Dewan is not the Chief Revenue authority in this State?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): No doubt; but not for the purpose of this Regulation.

PRESIDENT: Does the Act preclude the Dewan from being appointed as the Chief Revenue Authority?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It does not preclude. But so long as he has appointed the Chief Revenue Authority it precludes the Dewan from hearing revision petitions under the Regulation. I say the Commissioner should not be appointed as the Chief Revenue Authority in regard to these matters. He must be independent of the Commissioner because he is the final appellate authority. Therefore the revisional power must be vested in the highest revenue officer.

Then another matter which I wish to bring to the notice of the Council is Clause (2) of Section (50), which says:

"Within one month of the passing of an order under Section 22, the assessees in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Chief Revenue Authority to refer to the High Court any question of law arising out of such order, and the Chief Revenue Authority shall, within one month of the receipt of such application, draw up a statement of the case and refer it with its opinion thereon to the High Court."

I do not see any reason why a deposit of Rs. 100 should be made before asking the the Chief Revenue Authority to refer a point of law for the decision of the High Court. The Section itself does not say what is to become of the Rs. 100 when the matter is decided by the High Court. Supposing the decision of the High Court is that the question of law should be decided in favour of the tax-payer, the Section is not clear as to whether the deposit should be refunded to him or not. It may be said that the High Court, while making orders in regard to the costs of the case, will also include this amount. But there may be cases in which the High Court make no orders as to costs and they may ask both the parties to bear their costs.

PRESIDENT: A deposit is a deposit and you cannot change its character.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The Section does not say that it is merely a deposit. That should be refunded. It merely says "accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed". It is a fee, for whom, I do not know—for the Government or the Sirkar Vakil. There should be absolutely no fee for asking the Chief Revenue Authority to refer a point of law in regard to the Income Tax Regulation to the High Court. There may be questions of law, I can understand, very difficult questions of law, which may sometimes be decided against the tax-payer even though the matter may be doubtful. In such cases, if we have to pay a fee and, probably, if the High

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Court order is that the party should bear his costs, the party forfeits the deposit. This appears to be a harassing kind of provision, and should not be introduced in this Regulation.

Then I submit, as has been already pointed out, that it should be made clear that the tax-payer will have a right of moving the High Court independent of any reference by the Government. If the Chief Revenue Authority does not choose to make a reference, the subject must have a right to move the High Court for opinion upon a question of law stated by him. These are some of the remakrs which I wish to make in regard to this matter.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): With reference to his proposal about the revising authority may I ask Mr. Paramesvaran Pillai what is to be the position, the salary, etc., of the revising authority?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is not for me to say.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I put the question so that the House may come to a conclusion in regard to it. The Income Tax Commissioner is paid a salary. The revisional authority must necessarily have a higher salary.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I am saying that, for the purpose of the enactment, the Government must appoint a new officer for the purpose of revising the orders of the revenue collectors. Of course, the authority higher than the Revenue Commissioner in regard to income tax is the Dewan himself, and he himself should have the power of revising the orders passed by the Income Tax Commissioner.

MR. P. T. THOMAS (*Kottayam*): The people of the municipal towns have to pay double tax—one under the Municipal Regulation and another under the Income Tax Regulation.

PRESIDENT: Are you referring to profession tax?

MR. P. T. THOMAS (*Kottayam*): Although the one is income tax and the other is municipal tax, the payment is from one and the same person. He has to pay out of his income both the municipal authorities and the Government. That is very hard. For, in the municipal towns, one has to pay for the rent of the house one lives in and at the same time one has to pay a sum to the income-tax collector as well. Not only that, he is put to all kinds of trouble in producing his accounts to the municipal as well as the revenue authorities, in appealing against the decisions of the subordinate officers in both the departments. My proposal is that the municipal areas must be excluded from the operation of the Income Tax Regulation and that all revenue derived from income tax must go to the municipality. Now, there is a large complaint about municipalities that they do not give satisfaction to the town people. The reason is this. They have no funds to do anything. All the income tax from the towns is being collected by the Government and they do not help materially the municipalites to carry out works that are highly necessary in the municipal towns. When the

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[Mr. S. Subrahmanya Karayalar.]

people require that some works should be done, the Government say that the municipalities should take them up. But the municipalities have no funds. Whatever they realise is just enough for carrying out routine work. If the income tax is given to municipalities and they alone are authorised to collect it, the municipalities can work very well and the people will not have the hardship of producing accounts to two different authorities. It is a very vexatious thing to produce accounts or keep them to the satisfaction of the authorities. I therefore propose that the municipalities be excluded from the operation of this Regulation as I have already suggested.

Regarding the *Edavakai* and other matters, Mr. Krishna Aiyangar and others have spoken at length, and I fully endorse what has been said by them. Mr. Paramesvaran Pillai was saying that almost all the *Edavakai* lands are situated at Tiruvalla. But when questioned about the cultivation there, he was not in a position to reply. My information is that the *Edavakai* lands—almost all of them—are situated in the Changanachery and Minachil taluks. The important *Edavakais* of Vanjipuzha and Punjar—both of them—are situated in the Minachil and Changanachery taluks.

In regard to the income derived from private property, cocoanut and other cultivations, there are many owners who get an income of more than Rs. 2,000 a year from several of the compounds that have been acquired from these *Edavakai* lands. It would be very hard to ask them to pay income tax on their produce, because people have purchased those lands at very high prices with the idea that they will have to pay tax only to their *chiefs*.

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram cum Shencottah*): I heartily support the opinion of my friends on this side of the House in regard to the several amendments to the Income Tax Regulation. I have to say a few words in regard to lands owned by Travancoreans outside Travancore, *i. e.*, in British India. The Regulation, as it stands, exacts an income tax for the income derived from the lands outside Travancore, and this tempts a man who gets such an income not to bring it within Travancore. And he invests the money in British India alone. If he is not asked to pay income tax and if it is treated as capital and thus allowed to be invested in Travancore, than alone can Government derive the benefit of the investment in Travancore in the shape of income tax. At present the temptation is to invest that income in British India alone and not to bring it here. I have myself lands in British India. The temptation, as I said, is not to bring it here, because it is taxed here.

Then with regard to tax on dwelling houses, I think it is not advisable to levy the tax when there is no income derived from the house itself. The owner is obliged to spend money for the maintenance of the house and at the same time he has to pay income tax. This does not stand to reason. I request an explanation from the law member on that point.

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Then with regard to Travancore debenture bonds, people in Travancore are obliged to invest money on such a low rate of interest as five per cent. and yet they are asked to pay income tax on the interest received on account of debenture bonds.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): They are exempted under Section 43.

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): Then in regard to the levy of income tax on the income of Rs. 2,000 I have to say a word. A man whose income is Rs. 1,995 is not liable to the tax, whereas a man whose income is Rs. 2,000 is liable to pay Rs. 40. There is only a difference of Rs. 5 in the income and yet he has to pay Rs. 40 on account of income tax. This does not stand to reason. What I beg to suggest is that all persons whose income is Rs. 2,000 should not be taxed, and only income above Rs. 2,000 should be taxed.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I am attributed motives and intentions which were far from my mind when the Amending Bill was drafted. In the first place, it was stated that, on the pretext of having an innocent amendment, I wanted to include a class of people who are not intended to be included under the existing Regulation. The first point raised was, therefore, the definition of agricultural income in Clause (b), Section 2. I can only say that I never thought that it was capable of a different interpretation. My considered opinion was, and has all along been, that it would apply to agricultural operations on land which has been assessed for land revenue. I do not want to discuss the question because, as Mr. Robinson said, the interpretation of that expression is now before the High Court, and what I have to say will be represented, before the High Court, on behalf of Government by the counsel appearing for the Government.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether the circumstance that there is a question of law relating to the matter before the High Court prevents him from explaining the question here?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, I do not want to discuss the grounds on which the particular interpretation is based. But I may assure the House that I did not base it on my opinion alone. I based it on the opinion of a joint committee of the Council of State and the Legislative Assembly which unanimously expressed the opinion, that the word "agriculture," as it stood in the Income Tax Regulation of 1918, applies only to cases of lands on which land revenue is paid to Government, and that with a view to make the matter clear the words 'such lands' could be put in. I may also inform the House that the Committee consisted of a large number of members and that the Bill of 1922 was very closely scrutinised, considered and criticised by a very large number of non-official members in the Indian Legislative Assembly.

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[Mr. V. Subba Aiyar.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is it the last word on the subject?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that. The most important member there was Mr. Rangachari who proposed very many amendments on various points. The point which I am at is that none of them suggested that it was intended by the old Act to exclude agricultural income from land not paying Sirkar tax; but it was intended to include them. Therefore, what I submit is that, in the joint committee's report, there was absolutely no suggestion even from very severe critics of Government that the old Act was intended to exclude lands which were assessed for land revenue. All the same, I say, the various suggestions now put forward as to whether the definition of agriculture requires an amendment or not will be carefully considered by the Select Committee.

With reference to the other point raised by my friend Mr. Trivikramar Vasudevar and others with regard to the *Edavakai* proprietors, I wish to point out that it is not before the House, because I have not proposed any amendment with reference to Clause (*a*) of that definition, and that comes under Clause (*a*). Therefore I do not think I need answer that portion of the argument.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Section 3 excludes *Edavakai* proprietors.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as Section 3 is concerned, *Edavakai* proprietors are not excluded. They are now being taxed. I do not think any *Edavakai* proprietor would come forward and say that he has been exempted.

Then there is the other question raised by Mr. Subrahmanya Karayalar. He wanted me to explain it. As regards the question of assessing dwelling houses, to which Mr. Karayalar referred, let us take the case where two persons get an income of Rs. 2,000 each. One of them may in addition own a house which will fetch him, if let, an income of Rs. 50 or Rs. 100 a month while the other has none. It may so happen that the man who does not own a dwelling house has to pay a rent of Rs. 50 or more for a house to live in. It is really unfair that the person who is being forced to pay a rent of Rs. 50 or more out of his income, should also be forced to pay income tax, while the other man who is in a position to get an income of not less than Rs. 50 from his house should go scot free. There are very many such instances like this. If a man is worth Rs. 20,000 and if he is extravagant enough to put up a house for Rs. 20,000, I do not see why he should not be taxed for that house. If he is rich enough to put up a house for Rs. 20,000, there is no reason why he should not pay income tax for that house. I may say that the Income Tax Regulation is intended to tax the rich and not the poor.

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MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): Does the law member advise people to put up small sheds?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As far as possible, large investments in dwelling houses must be avoided, because the wealth of the State should be current in the shape of money.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Will Mr. Subba Aiyar give the same advice to the Government when they propose to put up palatial buildings?

PRESIDENT: Government have anticipated that advice.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think Government are, even now, spending disproportionately large sums of money on buildings.

My friend, Mr. Karayalar, also referred to the case of two persons, one getting an income of Rs. 1,995 and the other getting an income of Rs. 2,000 and said that though there is a difference of only Rs. 5 between the two incomes, while the former is not taxed at all, the latter alone is taxed about Rs. 40. I am sorry that Mr. Karalayalar, though he is paying a large sum as income tax, has not studied the Income Tax Regulation, because there is a distinct provision in the Regulation that if a person gets an income of Rs. 2001 he will be taxed only for the one rupee in excess of Rs. 2,000 and not for the whole of Rs. 2,001. There is a specific provision for the same in the Regulation.

Mr. Krishna Aiyar suggested that, if a man had to pay interest for a sum of money, the capital must be exempted from income tax and that the interest alone should be charged. There again, there is a considerable difference of opinion, and I do not think it is easy of solution. All the same, I say, that ought not to be allowed. Of two persons who have invested Rs. 20,000 each, if one should be reckless enough to purchase half a dozen motor cars out of the available money and thereby incurs debts, I do not see any reason why we should take into consideration how the debts were incurred—whether it was for extravagant purposes or for family necessities. Such a person could as well afford to be extravagant in the matter of paying income tax also. So, I think, that matter cannot be taken into consideration at all.

Then again, my friend Mr. Krishna Aiyar also referred to the processes whereby agricultural products may be made marketable. He wanted me to say whether *copra* or cocoanut oil could be taxed. I believe that the matter is not so difficult as he comprehended it. I would only ask him to read the Assembly Debates in the matter. Mr. Rangachari raised the very same question and Dr. Gour answered him by saying that the processes contemplated are processes which change the identity of the original product. If paddy is converted into rice the

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[Mr. C. Sankara Menon.]

identity is known. But if we convert cocoanut into cocoanut oil the identity is not known. So, that matter is not a very difficult one. I may also refer him to the case reported in 48 Calcutta, regarding the Killing Valley Tea Estate Company, in which the question of agricultural products was under consideration, and in which the question whether the drying of tea is an ordinary industrial process was decided. So, I submit, there are definite rulings on the matter for us to follow. In all these cases we have to follow ordinary rules of interpretation. It is not such a difficult matter as Mr. Krishna Aiyar seems to think. So, I do not think that the suggestion put forward by Mr. Krishna Aiyar regarding definitions deserves much consideration.

Then, with reference to the power of appeal it was pointed out that there are two appellate authorities provided for in British India while there is only one here. I may say that, so far as British India is concerned, there are Commissioners and Deputy Commissioners. Here also the appellate authority is the Commissioner consisting of different grades. Therefore, we stand on the same footing. At present, here, the Chief Revenue Authority and the Income Tax Commissioner are one and the same person and he has been invested with powers of revision. Whether to call it revision or second appeal, and if second appeal, in what particular cases he is to have powers of revision—all these questions may be considered by the Select Committee.

Then again, Mr. Sankara Menon suggested that the Savings Bank deposits and other such income should be excluded. There is Section 43 of the Regulation which empowers Government to exempt certain classes of incomes.

MR. C. SANKARA MENON (*Quilon*): May I know if any notification has been issued under that Section?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If any representation is made bythe people to the Government, Government will be able to consider whether such cases deserve to be exempted, if they have not already been exempted. Therefore, that does not require any amendment of the Regulation. I think it is better to have a general Section than restrict it to particular classes of cases. If it is found later on that the provision should be extended to other classes of incomes or that the exemption of any particular case should be cancelled, then that might necessitate an amendment of the Regulation, which, as is obvious, is not quite easy. Therefore, I submit, it is better to have a general clause in the Regulation itself empowering Government to exempt particular classes of incomes, and leave the public to make representations to Government in order to exempt particular classes.

MR. C. SANKARA MENON (*Quilon*): Have any such representations been made to Government and exemptions granted as a result of such representations?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe there are some. Probably Mr. Robinson may be in a better position to specify them. If there is any agitation, the question may be considered by Government. As already stated, the point that I am at is that there is no necessity for an amendment of the Regulation.

Mr. Paramesvaran Pillai referred to the question of the Chief Revenue Authority and said that the Chief Revenue Authority should be the Dewan. Here again, I may say that no amendment is necessary; because the powers of the Collector, the powers of Revenue Commissioner, and of the Chief Revenue authority, all these have to be prescribed by rules made under the Regulation by Government, and it is in virtue of that power conferred upon him by Government, that Mr. Robinson is now the Chief Revenue Authority. If any modification is necessary, Government will certainly consider the question as to who is to be the Chief Revenue Authority in the State, whether it is to be the Revenue Commissioner or the Dewan, and pass final orders, when this Bill becomes law. I do not think any amendment of the Regulation is necessary for that purpose.

Mr. Thomas said that professional tax and income tax should not be levied from the same individual. I would personally be glad if Mr. Thomas would influence the members of this House to see that no income tax is levied in municipalities. If so, certainly all of us will be exempted. On the other hand, I do not know if Mr. Kunjitomman and Mr. Kumara Pillai will agree with us in saying that we should be exempted from income tax. If Mr. Thomas, as Chairman of the Kottayam Municipality, would influence the members of municipal councils and send up to Government the suggestion that the provision in the Municipal Regulation relating to professional tax should be repealed, I think, Government would certainly consider that.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Would it not be possible to exclude the municipal towns from the operation of the Income Tax Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Nothing is more suicidal and dangerous than that; because, all of us who have all the advantages of town life would be exempted from payment of any tax, and people in rural areas, like Mr. Kumara Pillai, will have to bear the whole burden. Our President will certainly be very glad, and we will all be glad too, because we will all be exempted, since all of us live in municipal towns.

PRESIDENT: I may say that the President is paying the tax in spite of a contract to the contrary.

MR. J. JOHN NIDIRY (*Changanacherry cum Meenachil*): May I know whether it would not be possible to give away a percentage of the income tax collected from the municipal towns to the respective municipalities?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No. I believe income tax is intended to form part of the general revenue of the State in order to give relief to the general tax-payer, and not to contribute to particular municipalities. I may also point out that the major portion of the income tax collected is from the municipal towns.

PRESIDENT: Why the major portion only? Practically the whole of it, about 90 per cent., is from the municipal towns.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As I have already stated, if Mr. Thomas would move the various municipal councils to send up a proposal to Government for repealing the provision for professional tax in the Municipal Regulation, certainly the Government would consider the suggestion.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Would it not be possible to charge the people in municipal towns for income tax, deducting therefrom the professional tax that they are to pay?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That would be very little. Everybody in the municipal towns who has to pay about Rs. 40 or Rs. 50 as professional tax would certainly not mind paying income tax on the professional tax also, because it is only a negligible amount. Therefore I do not think I could subscribe to the suggestion of Mr. Thomas though personally I would be very glad if that is done.

The various other suggestions brought forward by the other members of the House, will, I daresay, be very carefully considered by the Select Committee, and I fully hope that the Bill, when it emerges from the Select Committee, would be perfectly acceptable to the House.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): May I know what the law member has to say with regard to the definition of the words "profession" "vocation", "business", etc, suggested by Mr. Krishna Aiyar?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am sorry I forgot that point. I may say, all the same, that it is not a very important point, after all. All that will, anyhow, be considered by the Select Committee. As we are aware, it is not possible to add a dictionary to each and every word used in the Bill. Everybody knows the ordinary rules of interpretation and construction. Words will be interpreted in the ordinary sense in which they are used ordinarily. They will, of course, be used in the meaning that is given to them in dictionaries.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): If they are not properly defined, they would work very great hardship among the public.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think it is likely. Anyhow, as I said already, I promise that every one of the speeches—of course, they are being reported here—will be

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carefully read and considered by the Select Committee. All the points suggested by the members will be taken note of, and not one of them will be omitted.

PRESIDENT: I take it that the principle of the Amendment Bill is accepted by the House.

The Secretary then read the title of the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to move that the Bill be referred to a Select Committee consisting of Messrs. Robinson, George, Mackie, Krishna Aiyangar, K. Parameswaran Pillai, P. K. Narayana Pillai and myself.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedmangad*): May I suggest the names of Messrs. L. R. Raja Raja Varma Koil Tampuran and Trivikramar Vasudevar also?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have no objection to the two names mentioned by Mr. Velu Pillai; but I think, as I always take care to do, I have included the names of all the gentlemen who strongly opposed the Bill.

PRESIDENT: I think one of them may be included.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Mr. L. R. Raja Raja Varma may be included.

MR. M. K. KHADIR PILLAI (*Nominated*): I would add one more name to represent the commercial interests.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Unfortunately, both the commerce members are absent. I think, in Mr. Mackie, we have a very able representative of the planters and of commercial interests.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Trivikramar Vasudevar also may be put in.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think we have already seven in the Select Committee. I have already put in Mr. L. R. Raja Raja Varma. I thought one member would be enough to represent the *Edavakai* interest in the Committee.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Is Mr. Subba Aiyar aware that the *Edavakai* and the *Jenmom* lands are two different things?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I know that.

PRESIDENT: You may take in Mr. Vasudevar.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to second Mr. Velu Pillai.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Then, we will have both of them.

MR. C. SANKARA MENON (*Quilon*): I would suggest the name of Mr. Subrahmanya Karayalar.

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We have already nine.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second Mr. Subba Aiyar's motion.

PRESIDENT: Mr. Subba Aiyar will be the President.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The report of the Select Committee will be submitted in two months' time

Mr. Subba Aiyar's motion was accepted by the House.

The Council adjourned at 4-15 P. M. to meet again on the next day.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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